# Commentary on the National Charter of the United States (Unratified)

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## INTRODUCTION

Some things are obvious. People are equal. Just by being alive, people have an entitlement. They should be free from being killed, they should have the ability to behave any way they like without harming someone else, and they should be able to pursue happy lives. In fact, that's why governments exist; they create the framework in which people can enjoy that entitlement. Those governments are only legitimate because the people say so.

That probably feels a little radical. But what if I told you it's just a paraphrase? Here's the original:

*"We hold these truths to be self-evident --that all men are created equal --that they are endowed by their creator with certain unalienable rights --that among these are life, liberty, and the pursuit of happiness --that to secure these rights, governments are established among men, deriving their just powers from the consent of the governed."*

That's from the Declaration of Independence. So now, let me ask you, why did my paraphrase sound radical to you? The answer to that question is why it's time for this Charter.

The framers of the Constitution did something nearly impossible. They framed a civil government without relying on unwritten law, and in which the government was bound. They botched it on the first try in 1777,[1] but they got a functional government when they tried again in 1787. The government took effect in 1789, and it's the basis for our government today.

We don't emphasize nearly enough in our History and Civics courses how radical that idea was at the time. They had a bare handful of examples to draw on when they started, most of them being the constitutions of the states. Despite that, they established a republic that has lasted over two centuries.

They were writing in response to the English crown, and they did so within an 18th-century context. They left gaps. Some they thought intuitive, some they couldn't imagine at the time. Some were deliberate, in the interest of flexibility.

Today, those gaps have been filled. Gaps in constitutional law get replaced by executive orders, administrative regulations, court decisions, and statutes. But, in many cases, those patches drift from the Declaration's unflinching assertion of natural rights and consent of the governed.

This Charter is designed to fill those gaps without distancing ourselves from our founding principles.

[1] The first foundational law of the United States wasn't what we today call the Constitution. It was the Articles of Confederation, which were drafted in 1777 and ratified in 1781. They didn't work out, to put things mildly.

What are those principles,  and how does the Charter address them?

- The citizens, operating collectively, are the sovereign voice. That voice doesn't only speak at the ballot box. While the overall constitutional structure remains republican, a few features of direct democracy amplify that voice.
- The purpose of government is to secure our rights. The Charter resolved who has which rights, and it constrains the government from "balancing" those rights away. Courts have guidance to aid their interpretation of constitutional questions.
- The government is legitimate only as long as it has our consent. This Charter operationalizes the expression and withdrawal of consent.

Throughout the Commentary, I make the case for what currently works, what is degraded in function, and what isn't operating at all, and I explain how specific provisions address those different states.

So let's talk about what you'll be reading. First, I didn't write this like a term paper. I tried to keep the commentary tone conversational. In a few places, I get a little sharp. That's ok; sharpness is part of debate, and debate is the heart of the democratic process. This is deep and important, and I want to keep you with me. The last thing we need is for this to get dry.

Second, there are a couple of notes on the way I've presented the material.

1. I've used a ton of footnotes. They're there to either give you a citation or provide other context. If footnotes bug you, ignore them. They're useful, but not necessary.
2. The text itself is in two parts for each passage.

    a. There is text that looks just like this paragraph. That's commentary. It's there to explain, contextualize, and persuade. It isn't part of the Charter. It's there for you.
    b. There is also text that looks like this. That's the actual text of the Charter, which I sometimes refer to as "blackletter." The blackletter is still in plain English, but it isn't conversational.
3. From this point on, I refer to the document you know as "the Constitution" as "the Constitution of 1789."[2]
4. If you're a stickler for citation formats, you might as well get angry right now. I've deliberately adopted my own stylebook to provide citations accessible to the layperson (because “232 US 214” doesn’t mean anything to most people). You won't find MLA, Bluebook, or any other system in this commentary, but I think you'll find my citations accurate and easy to follow.

That's enough of that. Let's dig in. Let me explain the proposed draft of the National Charter of the United States to you.

[2] You may wonder why 1789, when it was drafted in 1787. It's a fair question. Political Scientists and Historians often use the 1787 dating, but legal work usually cotes the forst date of operation. Since I refer to other laws and legal decisions throughout, I opted for the latter dating.

## PREAMBLE

> In 1776, the Founders of this nation said emphatically that all are equal, they are endowed with unalienable Rights, and that it is to secure those Rights that Governments are instituted, deriving their just powers from the Consent of the Governed.

This is what the United States was built on. Thomas Jefferson wrote it. This is lifted almost word-for-word from the Declaration of Independence.[1]

> They also declared, in defiance of their Government, that whenever any Form of Government becomes destructive of those ends, the People have the Sovereign Right to alter or to abolish it, instituting a new Government to better meet their needs.

This continues the thread. The People give Consent. They can withdraw it and form a new government, which the founding generation did.[2]

> Today, we, the Citizens of the United States of America, recognize that every person born is both unique and equal to every other. We agree that it is our Sovereign Right to form a government to secure our Rights, and that it is made legitimate solely through our Consent.

---

[1] *Compare* **Declaration of Independence,** Thomas Jefferson (1776): "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.--That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed...."

[2] *Compare* **Declaration of Independence,** Thomas Jefferson (1776): "--That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness."

This statement declares a through line from what a group of radicals in Philadelphia wrote in defiance of their King to what this Charter is doing. It shows how the founding philosophy is still alive and well, and how, centuries later, we still hold to the same notion that it's up to *us* when to change the government, and how.

> So, we declare a new government, as established in this National Charter of the United States.

And this statement makes our intention clear: we're abolishing our old government, replacing it with a new one, and that new government is defined in this Charter.

Everything that follows, through this entire Charter, flows from the philosophical backbone laid down in this Preamble.

## ARTICLE I – THE PEOPLE

The Constitution of 1789 implied citizen sovereignty in its first three words – "We the People." Little more is said about the people after that. In Civics classes, we're taught that the government consists of three coequal branches. There's a lot of discussion about the checks and balances between the branches. But there's no talk about how the people put checks on the government. If there is, that subject is narrowed down to, "and if the people don't like it, they can vote their officials out of office." That's not a very "sovereign" citizenry. Especially not one captured by political parties that limit the voters' choices.

This Charter establishes three formal branches of government, just like the Constitution of 1789 did. But it also establishes an informal, but very real, fourth branch that is senior to the three formal branches. Specifically, this fourth branch, this *sovereign* branch, is made up of the citizens of the United States.

### Article I, Section 1 – Sovereignty of the Citizens

#### Article I, Section 1.A. Sovereignty

All political power in the United States comes from the Citizens. Government only exists because the Citizens delegate power to it. They limit what it can do through this Charter. No Office, law, institution, or official is above the Citizens or the law. All government workers answer to them and can be held accountable through lawful means.

This Charter is based on equality, natural rights, and consent of the governed. And if government really derives its "just powers from the consent of the governed," then that power comes from the governed. In other words, the government gets its power from us. Full stop.

The Constitution of 1789 implies this is the case ("We the People"), but it never explicitly states that the people, particularly the citizens, are the source of the government's power. Over the more than two centuries since the ratification of the Constitution of 1789, the government has gradually eroded the rights of the people.[1] The Charter restores the power structure to its proper order, and it does so before anything else.

While everything in a constitutional document has equal legal weight, this clause's position as the Charter's first positive statement emphasizes the citizens. As it should.

*Figure 1: "The County Election," George Caleb Bingham (1846).*

**Article I, Section 1.B. Accountability and Immunity**

Government officials and agents can be charged with crimes or sued—unless this Charter clearly protects them. The President, Vice President, and Members of Congress are presumed to have personal Civil Immunity for actions taken in good faith while doing their jobs. The courts can strip that immunity for behavior that willfully exceeds their authority or are intentionally designed to violate or evade the law.

[1] A critical reader might challenge me here to explain which rights. I don't entertain that demand here because I lay out abuse after abuse, case law citation after case law citation, as I progress through the commentary. Right now, I ask you to trust me to make the case. When we're done, you can be the judge of whether I succeeded.

No official at any level of government enjoys Criminal Immunity—not even for actions taken as part of their official duties. Elected and appointed officials do not enjoy immunity from indictment while in office, regardless of the office they hold.

It is ridiculous that government officials have immunity for bad actions. But they do. This idea began early and has expanded throughout our history.

The landmark case *Marbury v. Madison* is mostly remembered as establishing judicial review. But Chief Justice John Marshall also made a notable point about presidential powers. He ruled that some were reviewable and some were not: "By the constitution...the president is invested with certain important political powers, in the exercise of which he is to use his own discretion, and is accountable only to his country in his political character, and to his own conscience....and whatever opinion may be entertained of the manner in which executive discretion may be used, still there exists, and can exist, no power to control that discretion."[2] Despite this surprising latitude, the founding era and early Republic had only narrow immunity protections.

But in 1870, in the case of *Bradley v. Fisher*, judges were granted immunity from civil liability for their judicial acts, even when beyond their legal authority and done maliciously or corruptly: "In the present case we have looked into the authorities and are clear...that judges of courts of superior or general jurisdiction are not liable to civil actions for their

[2] *Marbury v. Madison*, **Volume 5, United States Reports,** opinion starts at page 137 (1803). See especially pages 165-66 for this pinpoint citation.

judicial acts, even when...in excess of their jurisdiction, and are alleged to have been done maliciously or corruptly."[3] This opinion became a template for immunity expansion. It has been used to justify broad immunity, without recognizing individual accountability or legal remedies for wrongdoing.

In Congress, the immunity granted by the Speech and Debate Clause has expanded to cover all "legislative acts."[4] In fact, that immunity has been extended to congressional aides for legislative activities.[5]

In the Executive branch, civil immunity now extends to acts within the "outer perimeter" of official duties, simply because the president should not have their attention diverted by private lawsuits.[6]

Even more significantly, the president now has immunity from criminal prosecution for acts within their "core constitutional powers" and presumptive immunity for *all* "official acts."[7]

Our nation is famously litigious. Elected officials need *some* personal protection against liability to do their jobs, but that liability needs limits. This passage gives them *presumptive* protection against personal civil liability. That's got a lot of pieces to it. "Presumptive" means that they are *assumed* to have civil immunity (although the Supreme Court can strip

[3] *Bradley v. Fisher,* **Volume 80 United States Reports,** opinion starts at page 335 (1871). See especially page 351 for this pinpoint citation.
[4] *Kilbourn v. Thompson*, **Volume 103, United States Reports,** opinion starts at page 168 (1880).
[5] *Gravel v. United States*, **Volume 408, United States Reports,** opinion starts at page 606 (1972).
[6] *Nixon v. Fitzgerald*, **Volume 457, United States Reports,** opinion starts at page 731 (1982).
[7] *Trump v. United States*, 503 U.S. **Volume 603, United States Reports,** this volume is not yet published in final form (2024). Refer to https://supreme.justia.com/cases/federal/us/603/23-939/, which the author of this commentary last visited in November 2024.

that immunity). “Personal” means that, as *individuals*, they can’t be liable. This is important. Litigants could *still* sue the agency in question, or the cabinet heads, department heads, etc., who are carrying out the orders of those officials.

In other words, political officials are not *personally* liable in civil matters unless the courts first agree with the litigant that their immunity should be stripped. A specific standard must be met to do so. The litigant is required to show that either:

1. The behavior in question exceeded the official’s authority, and that it did so willfully, or
2. The behavior was intentionally illegal or designed to circumvent the law.

There has been considerable debate over whether sitting officials, especially a sitting President, can be indicted. This slams the cell door shut on that argument. Any official, regardless of office, can be indicted while in office.

“But that opens them up to prosecution.” Yes. Don’t commit crimes while in office. The solution to that problem is lawful behavior, not lawless immunity.

For nearly two hundred years, we managed that risk without pretending that the President was a god-king. When Watergate happened, we clutched our pearls in a collective act of constitutional cowardice. Everything since then has made matters worse.

Police and law enforcement officers cannot use "Qualified Immunity" as an excuse for doing things a properly trained officer would know they do not have the legal authority

to do. The Government must train officers in the Rights of the People before letting them work with the public. Not knowing the law is not an excuse.

Qualified immunity is equally outrageous when applied to law enforcement officials. In 1967, the Supreme Court ruled that police officers could claim immunity if they acted "in good faith and with probable cause." The ruling was narrow: officers needed to prove they acted in good faith and with probable cause, and the burden was on them to establish these elements.[8] Later, the court strengthened the burden for "good faith" before qualified immunity could be claimed.[9] What seemed like a reasonable protection for law enforcement was extended more broadly to school officials, but a slightly better test was put in place for the subjective element of good faith.

But in 1982, there was a sea change. In Harlow v. Fitzgerald, the Supreme Court completely removed the subjective "good faith" test from the defense's requirements. The burden was shifted to the plaintiff to demonstrate violations of "clearly established law."[10] On its face, this seems like a reasonable position to take. Unfortunately, this opened the door to a series of rulings that consistently raised the bar for overcoming qualified immunity.[11] This was, and continues to be, an injustice.

[8] *Pierson v. Ray*, **Volume 386, United States Reports,** opinion begins on page 547 (1967).
[9] *Wood v. Strickland*, 420 U.S. 308 (1975). **Volume 430, United States Reports,** opinion begins on page 308 (1975).
[10] *Harlow v. Fitzgerald*, 457 U.S. 800 (1982). **Volume 457, United States Reports,** opinion begins on page 800 (1982).
[11] *Anderson v. Creighton*, 483 U.S. 635 (1987) **Volume 483, United States Reports,** opinion begins on page 635 (1987); and **Volume 555, United States Reports,** opinion begins on page 223 (2009).

Qualified immunity has been so distorted from its original purpose that it's unrecognizable in its current form. It's routinely used by police as a shield against accountability in civil rights cases and criminal prosecutions.[12]

All government acts are justiciable.

The notion that government officials are above the law has grown. This isn't what America is supposed to be. Looking back at *Marbury v. Madison*, Chief Justice Marshall hailed our "government of laws, not of men." He warned against losing that guiding principle. Paradoxically, he also created the building block that later courts used to develop the "Political Questions" doctrine.

What's the Political Questions doctrine? The short answer is that it's a judicially constructed loophole the courts can use to avoid ruling on some issues. But that answer lacks nuance and ignores some history. Let's unpack it.

In *Marbury v. Madison*, Marshall wrote, "The province of the Court is solely to decide on the rights of individuals, not to inquire how the Executive or Executive officers perform duties in which they have a discretion. Questions, in their nature political or which are, by the Constitution and laws, submitted to the Executive, can never be made in court."[13] In my

[12] See:

- *Corbitt v. Vickers,* **Volume 929, Federal Reporter, Third Series,** opinion begins on page 1304 (decided by the U.S. Court of Appeals for the 11th Circuit, 2019);
- *Baxter v. Bracey,* **Volume 751, Federal Appendix,** decision begins on page 869 (decided by the U.S. Court of Appeals for the 6th Circuit, 2018);
- And *Jessop v. City of Fresno*, **Volume 936, Federal Reporter, Third Series,** opinion begins on page 937 (decided by the U.S. Court of Appeals for the 9th Circuit, 2019).

[13] *Marbury v. Madison,* **Volume 5, United States Reports,** the opinion begins at page 137, and the specific portion of it quoted here is from page 170 (1803).

view, this is inconsistent with a "government of laws, not of men," which Marshall cites elsewhere in his opinion.[14] While I personally disagree with Marshall on this point, his opinion is very narrow here. Still, it gave a foothold for later courts to expand upon.

That was the word on the matter for nearly half a century. But in *Luther v. Borden (1849)*, the entirety of legal reasoning rested on the notion that the "political department" could decide issues that the judiciary couldn't (in this case, whether or not a majority of eligible voters adopted a state constitution in Rhode Island).[15]

Again, the courts were silent for a long time—113 years, in fact. But in *Baker v. Carr (1962)*,[16] the Supreme Court spoke on the question again. In that case, the court set limits on the political questions doctrine, thereby further enshrining it in common law.

We've lost our way. "Political Questions" is often invoked as a tenet of the doctrine of separation of powers. But judicial review is a check, not a usurpation. It's intended to keep the Executive and Legislative branches within the bounds of the Constitution. The Political Questions doctrine turns that on its head. This clause of the Charter sets that back to rights.

**Article I, Section 1.C. Supremacy of Rights**

> No Right can be taken away or reduced unless this Charter clearly allows it. Any government exercise of power that weakens a protected Right is not valid.

[14] **Ibid.,** the full quote, which appears at page 163 is, "The Government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation if the laws furnish no remedy for the violation of a vested legal right." I invite you to what you will with that context. He goes on from there to begin justification for "political questions."
[15] See *Luther v. Borden,* **Volume 48, United States Reports,** opinion begins at page 1 (1849).
[16] See *Baker v. Carr,* **Volume 369, United States Reports,** opinion begins at page 186 (1962).

All Rights guaranteed under this Charter apply equally at all levels of government, without exception.

No emergency can justify reduction, elimination, or suspension of Rights, even on a temporary basis.

Returning to the foundational principle outlined in the preamble, this clause simply asserts there is nothing, not even an emergency, that can justify the removal of rights.

Rights preceded the Government. Therefore, the government has no authority to take them. The government's sole reason for existence is to secure them.

This is a very rare normative "why is it this way" statement in the Charter text. This principle is central to the Charter's entire thesis: that government only exists to secure rights. This note is there to drive home that point. It's there specifically to guide courts when they are called to interpret the Supremacy of Rights.

History is filled with examples of "temporary" suspensions of rights that transformed into permanent tyranny. The commentary I provided above for Article I, Section 1.B. illustrates how this happens over time, using the specific example of governmental immunity. But the Alien Enemies Act of 1798 was used to intern the Japanese Americans during World War II. That's another example from our own history. Even a casual search will find many others. If

we broaden our lens to the whole world, we see Russia under Putin, Hungary under Orbán, and Turkey under Erdoğan, and those are just examples from recent events.

To be sure, the President has certain very tightly limited emergency powers, but even those don't permit wholesale derogation of rights.[17]

Rights can't be curtailed for the "security of the state," or "the safety of the people," or for simple administrative convenience. More often than not, it ends in injustice. Ask a Muslim in the post-9/11 era. Ask one of the few living survivors of the Japanese internment camps.

## Article I, Section 2 – The People and Their Rights

### Article I, Section 2.A. The People

#### *Article I, Section 2.A.1. Personhood*

> Only human beings are "Persons" under this Charter.

This clause restores sanity to American constitutional law. No longer are corporations, partnerships, and other legal entities treated as people. Congress can give those entities statutory rights, but personhood belongs solely to humans.

Legal fictions are sometimes necessary to explain or understand certain legal concepts. Still, it stretches common sense that corporations or other legal entities are "persons"

[17] *See* **National Charter of the United States** (unratified), Article III, Section 4.D. Limits of Executive Power and Preservation of Rights in States of Emergency

under the law with the same rights as humans. Under current legal doctrine, they are, though. This sentence ends that nonsensical approach.

The concept of corporate personhood has its roots in English common law, dating back to the 12th century. It began with the principle that boroughs, guilds, religious institutions, and similar entities could own property, enter contracts, and sue or be sued as legal entities, separate from their individual, human members. It was a simple legal tool for dealing with associations of persons as whole entities, in and of themselves.

Early America had its corporations, too. State charters created corporations for specific public purposes like building roads, bridges, or canals. These corporations had limited scope and duration. They were also closely tied to public benefit. They were intended for the public good. Profit for investors was permissible, but secondary.

Over time, the concept broadened. A century after our founding, in *Pembina Consolidated Silver Mining Co. v. Pennsylvania*, the court said, "The application of the Fourteenth Amendment of the Constitution…. The inhibition of the amendment that no state shall deprive any person within its jurisdiction of the equal protection of the laws was designed to prevent any person or class of persons from being singled out as a special subject….

Under the designation of 'person,' there is no doubt that a private corporation is included. Such corporations are merely associations of individuals united for a special purpose…."[1]

First, the simple text of the decision to the contrary, the fact that the court felt it necessary to explicitly say that "there is no doubt that a private corporation is included," shows that there *was* doubt. If there hadn't been, the court wouldn't have needed to address that question. Second, the Fourteenth Amendment was created to protect freed slaves. It is sickening that it was used instead to protect the most powerful in society, only 20 years after ratification. An amendment intended to protect the powerless was twisted to strengthen the powerful even further.

In 1978, the Supreme Court held that a Massachusetts law was unconstitutional. The law restricted corporate spending on ballot initiatives to issues materially affecting their business or property. But the Supreme Court recognized that corporations have the same free speech rights as humans do.[2]

In 2010, corporate personhood was expanded, and corporations were explicitly allowed to spend money as a form of speech *and,* in a new twist, "independent" campaign expenditures, that is, money given not to candidates or parties, are equally protected, all because corporations are "persons" under the law.[3]

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[1] *Pembina Consolidated Silver Mining Co. v. Pennsylvania*, **Volume 125, United States Reports,** opinion begins on page 181 (1888). See especially pages 188–89 of this pinpoint citation.

[2] *First National Bank of Boston v. Bellotti*, **Volume 435, United States Reports,** opinion begins on page 765 (1978).

[3] *Citizens United v. FEC*, **Volume 558, United States Reports,** opinion begins on page 310 (2010).

The idea of corporations as people flies in the face of common sense. When was the last time a corporation served on a jury? When was the last time one registered for the Selective Service? When has a corporation ever been incarcerated? What does a corporation's right to bear arms look like? Can a corporation vote? These questions are nonsense. So is the notion of a corporation as a person.

The primary argument in favor of corporate personhood seems to be that corporations are composed of persons, so they must *be* persons. My body is made up of cells, but I am not a cell. Taken as a whole, I don't function like a cell.

Besides, the people who "make up" corporations also don't have an equal voice in these matters. Only the most significant shareholders have a meaningful voice in decision-making, and that voice is limited to calling for a change in leadership. The notion that a corporation has a voice because the people who make it up have voices is laughable, at best.

> This Charter is concerned solely with legal definitions and enforceable Rights. Before birth, no individual can claim or exercise the legal Rights reserved for Persons, such as the Rights to free expression, religious exercise, or habeas corpus. Therefore, under this Charter, legal Personhood begins at birth.

There is no constitutional definition of when life begins. Those who are morally opposed to abortion have long said that life begins at conception. Others have said it starts at viability

(which is hard to pinpoint, especially with modern medicine). Others say the question is moot: it becomes a chicken-and-egg question. Human DNA stretches back well over 100,000 years. Did the DNA make the human, or did the human make the DNA?

This Charter doesn't attempt to provide an answer. But that leaves open the question of when *legal personhood* begins.

This is a difficult needle to thread. Still, the question needs an answer for legal clarity. Moral truth and ethical clarity belong to philosophers and clergy, not to constitutional law. Medical questions are the realm of physicians. But when can rights plausibly be exercised?

If legal life begins at conception, how does a fetus get a habeas hearing when its mother is detained or arrested? It can't. That's an apparently ridiculous example, but it logically flows from the premise that life begins at any point before birth.

"But Gary, the infant would be released from custody at birth." Exactly. That's when its rights begin; therefore, that's when it becomes a legal person.

> The People of the United States are all the Persons in its territory and subject to its laws, as are those Persons in the sovereign territories of federally recognized Tribes. The People include both Citizens and Noncitizens alike.

There are popular opinions that say that, under the Constitution of 1789, "the People only includes citizens. That's not true. It's settled law that anyone within the United States is a person. Here, the Charter enshrines that in constitutional law. Anyone in the United States and subject to its laws means every human who isn't somehow immune to U.S. law. And the

last sentence clearly codifies established legal doctrine – "persons" is distinct in definition from "citizens," because it applies to everyone, regardless of citizenship.

***Article I, Section 2.A.2. Citizenship***

> Citizens are the Sovereigns of the United States. Anyone born or naturalized in the U.S. and under the authority of its laws, excluding those born to foreign nationals present on tourist visas, is a Citizen of the U.S. and their home State or Territory.
>
> Members of federally recognized Tribes are also presumed to be Citizens of the United States unless they explicitly renounce that Citizenship. They can be dual Citizens of their Tribe and of the United States.
>
> A child born outside the United States to at least one Citizen parent is a Citizen at birth.

Citizenship is passionately debated at length. The question of who is a citizen isn't new, but it also isn't as settled as we like to pretend.

Under the Articles of Confederation,[4] control of citizenship belonged solely to the individual states. Each state had its own rules, which caused enough confusion that the

[4] An enormous number of Americans don't know about the Articles of Confederation. Technically, the Constitution of 1789 is the second constitution of the United States. The Articles of Confederation were the first. They were drafted in 1777 and ratified in 1781. They were immediately and obviously inadequate. The States had much more power (they were seen as independent political States or nations, not as provinces, the way we understand them now), and Congress had almost none. The Articles were only in effect from 1781 until 1789. A thorough discussion of the Articles, their structure, and their shortcomings is worthwhile, but beyond the scope of this commentary.

Philadelphia Convention granted Congress the power "To establish an uniform Rule of Naturalization…" in the Constitution of 1789.[5]

The year after the new constitution took effect, Congress passed the Naturalization Act of 1790. It established that free white aliens could apply for citizenship, and that any of their children who were under twenty-one at the time of their parents' naturalization would also be citizens.[6] While this established a rule for naturalization, the broader rule of citizenship was not addressed in constitutional law or federal statutes.

In practice, states continued to apply their own definitions when naturalization wasn't at issue. For African Americans, the rules varied significantly from state to state until 1857.

For free white males, the states mostly relied on precedent from English common law. They applied the principle of *jus soli* (right of soil), which we commonly call "birthright citizenship" today, to men born within the confines of the United States. For those children of citizens who were not born on U.S. soil, they applied the principle of *jus sanguinis* (right of blood). That is, they were considered citizens because they were *children* of citizens.

In 1857, the infamous Dred Scott decision declared that African Americans not only weren't, but could never be, citizens.[7] After our shameful and bloody Civil War, the United States ratified the Fourteenth Amendment, which states, in part, "All persons born or

[5] **United States Constitution of 1789,** Article I, Section 8, Clause 4.
[6] **Naturalization Act of 1790,** published in **Volume 1, United States Statutes at Large,** beginning at page 103. This reflects the law as originally enacted by Congress, before any portions were later reorganized or codified into the United States Code.
**7** *Dred Scott v. Sanford*, **Volume 60, United States Reports,** opinion begins at page 393 (1856).

naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States…."[8]

But that opened up another line of questions. Surely, some argued, that only applies to the children born to *citizens*, right? In 1898, the Supreme Court said, "No. The law says 'all persons.' That includes the children of immigrants."[9]

Today, this is a matter of ongoing heat and debate. There are challenges to this so-called "birthright citizenship." This Charter rejects those challenges. The settled law has served well, and it continues to do so. It protects those who would otherwise be potentially stateless.

Statelessness is how non-persons are made. This Charter does not sanction this civic death.

***Article I, Section 2.A.3. Naturalization***

> Every free country should have a fair and clear way for people to become Citizens. Congress must establish and maintain a simple and fair process for Noncitizens to become Citizens.

This clause requires minimal comment, except to note that the current naturalization system is neither fair nor simple. *What* the rules are is a matter for Congress to decide, but

[8] **Constitution of 1789,** Amendment XIV, Section 1.
[9] *United States v. Kim Wong Ark,* **Volume 169, United States Reports,** opinion begins at page 649 (1898).

anyone should be able to understand them, and they shouldn't arbitrarily create burdens for one class of people that don't exist for another.

### *Article I, Section 2.A.4. Age of Majority*

A Person reaches the Age of Majority on their eighteenth (18th) birthday. They are entitled to all the Duties, Rights, Privileges, Powers, and Protections afforded to adults.

This is one of those things no one thinks about until they do. But the point at which someone is considered a legal adult is fundamental to much of our law. This clause eliminates any ambiguity on the subject.

## Article I, Section 2.B. Rights

### *Article I, Section 2.B.1. Threefold Rights*

Article I, Section 2.B.1(a). Categories of Rights

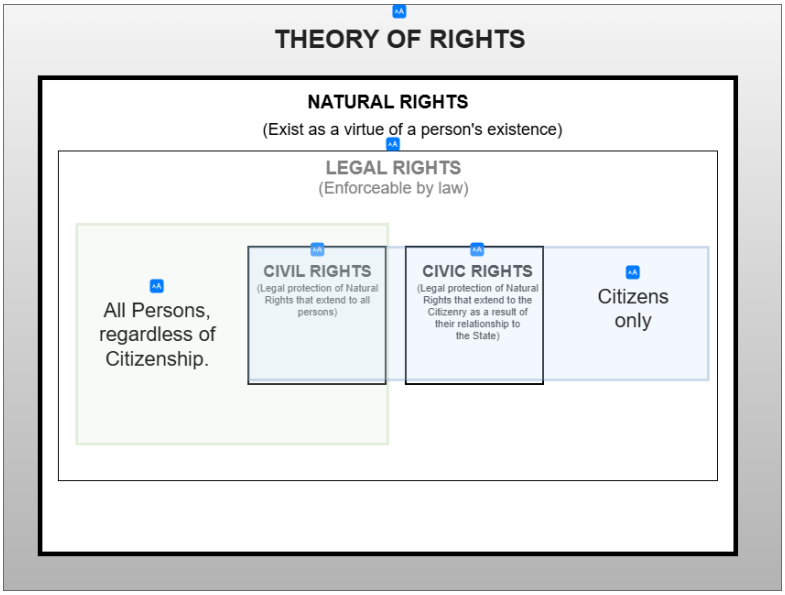
This Charter recognizes three categories of Rights: Natural Rights, Civil Rights, and Civic Rights.

Natural Rights are the basic freedoms that every human being has simply by being alive. No government grants these Rights, and it is illegitimate for any government to deny them.

Civil Rights are legal protections that apply to all Persons under the law. Civil Rights give force to Natural Rights and guarantee fair and equal treatment under the law. They also protect Persons from abuse of power by the government.

Civic Rights are the exclusive Rights of Citizens.

This Charter assumes that all persons are equal and have certain rights simply by being human. These are called natural rights, and they preexist government. They are the rights


THEORY OF RIGHTS
NATURAL RIGHTS
(Exist as a virtue of a person's existence)
LEGAL RIGHTS
(Enforceable by law)
All Persons, regardless of Citizenship.
CIVIL RIGHTS
(Legal protection of Natural Rights that extend to all persons)
CIVIC RIGHTS
(Legal protection of Natural Rights that extend to the Citizenry as a result of their relationship to the State)
Citizens only

the Preamble references. However, natural rights are philosophical and moral concepts. Preserving them is the reason that the government exists, but they have no legal weight on their own.

Civil rights, on the other hand, carry legal weight. Every person in the United States, whether they are a citizen or not, is guaranteed civil rights. Civil rights are the specific provisions, even if only implied, that give legal force to the philosophical natural rights.[10] A way to think of this is that we know we are entitled to certain protections, freedoms, and

[10] The specific civil rights guaranteed to all persons are detailed in the **National Charter of the United States** (unratified), Article I, Section 2.B.2. Civil Rights.

treatment just by being alive. To give those protections, freedoms, and treatment legal weight, we enact laws that apply to everyone, which we call civil rights laws.

There is a third category of rights. These are tied to citizenship. Governments grant or restrict certain rights on the basis of citizenship. For example, when you're a citizen of one country, you (usually) can't claim citizenship protections from others. So civic rights protect American citizens from the vulnerabilities that come with this exclusive relationship, like being left stateless or denied re-entry to their own country. These are the legal rights inherent to American citizenship.[11]

Together, these form a threefold theory of rights that prevails throughout the Charter.

It's a little unusual to break down rights theory this way directly in the text of a foundational law. However, this Charter refers to each of these categories directly at various points. This  subclause gives the courts guidance on how to understand those references.

Article I, Section 2.B.1(b). Associations

> Individual Persons possess Civil Rights.  Individual Citizens possess Civil Rights and Civic Rights. Associations—whether corporations, unions, nonprofits, churches, Political Action Committees, or any other collective entity—possess neither of these

[11] The civic rights enjoyed by citizens are detailed in the **National Charter of the United States** (unratified), Article I, Section 2.B.3 Civic Rights of Citizens.

in their own name. The individuals who make up their membership retain all Rights they hold as Persons or Citizens.

This clause expands on the Personhood clause.[12] Not only are associations explicitly *not* persons, but this clause also emphatically states they do not have rights in the same way that persons do. This firmly closes the door to the tortured expansions of rights to entities that can't have the same legal responsibilities or liabilities as persons.

Associations don't have the right to free speech, for example. They don't have bodily autonomy or the freedom to assemble. The absurdity of that sentence demonstrates *why* associations can't have civil or civic rights. Still, courts have routinely treated associations as having a full palette of rights. With this clause, I'm rejecting that legal fiction entirely.

At the same time, this clause reaffirms the rights and powers that the persons who make up the membership of associations already have. It's the *association* that lacks constitutional rights and powers, not the *individuals* within it.

This clause does not prohibit Congress from granting *statutory* powers or rights. Congress can still assign powers or rights to associations. These legal conveniences shouldn't be confused with moral or constitutional entitlements.

Although associations lack Civil and Civic Rights, they may still seek legal redress when harmed. U.S. civil law recognizes injury and remedy not as rights, but as procedural

[12] *See* **National Charter of the United States** (unratified), Article I, Section 2.A.1. Personhood.

constructs. In doing so, the association must establish standing as if it were an individual Person. This is a legal fiction for the purpose of remedy, not a grant of Rights, nor a recognition of the association as a Person under this Charter.

The obvious question is: If associations don't have rights, how can they access justice? This paragraph answers that question. The courts address injury and remedy in tort law, but there is no inherent *right* to remedy. There's only a *procedure* to request it after harm has occurred.

Still, how can an association show standing? The language here requires the association to *act on the fiction* that it is an individual and show Personal Standing.[13] But the language is extraordinarily clear: doing so is *only* a fiction and doesn't confer any understanding of the association as an *actual* person, entitled to rights.

In other words, the Charter gives Associations access to the courts. What it doesn't do is strip them of constitutional rights they should have had, only to give them right back under the guise of equal access to justice.

Article I, Section 2.B.1(c). Quasi-Governmental Entities

It has long been the case that some organizations wield government-like power over markets or individuals. This became the basis for antitrust law, which has always lagged behind the abuses it's supposed to rein in.

[13] *See* **National Charter of the United States** (unratified), Article IV, Section 4.A. Personal Standing.

Very few Americans deny that the abuses exist or that they should be stopped. But imposing limits has always been tricky. Sometimes, we hear something like this: "We aren't out to *hurt* anyone. We're just being punished for being successful." That's a compelling argument, the more so because the first sentence of that statement is often true. Intent matters, but it isn't the only thing that matters. It isn't relevant to the ant that you crushed underfoot while walking to your car this morning that you didn't intend to kill it; it's still just as dead.

Now, let's add another layer: the government outsources functions like private military contractors, private contractors to run prisons and detention centers, and so on.

And to complete our lasagna of powerful actors, we have the unequal relationship between employers and employees, not only in the traditional labor market, but in the gig economy.

"Oh, here it is. The socialist takeover."

Hardly. Socialism is about wealth and its distribution, but the Charter doesn't address that. What the Charter *does* do is ensure that actors who wield power the way the government does are subject to the same limits on authoritarian abuse as the government. Let's walk through how that works together.

*Article I, Section 2.B.1($c_1$). Government-Authorized Exercisers of Force*

When private individuals or entities use force, detain, incarcerate, or engage in law enforcement under government authority or contract, or acting in concert with governmental or authorized actors, they are considered Government-Authorized

> Exercisers of Force. They are bound by the constitutional limitations on government. Examples of this category include bounty hunters, private military contractors, operators of private prisons and detention centers, private security contractors, citizen auxiliaries deputized under *posse comitatus* authority, deputies, and similar entities.

Blackwater – a private military contractor.

The Geo Group – one of the largest private prison operators.

These are examples of companies that have done the government's work. There are others. That's fine. The government outsources all sorts of things to private companies. But some of these things are simply different in character. They don't just affect what day your trash gets picked up; they can deny your liberty, life, or physical well-being.

That's the type of actors this clause is aimed at, along with civilian groups deputized for law enforcement work. That's what "deputized under *posse comitatus* authority" means here.[14]

The key ideas here are:

- The use of force
- Incarceration or detention
- Engagement in law enforcement

14. *Posse Comitatus* authority shouldn't be confused with the **Posse Comitatus Act**, which serves an entirely different function.

Groups that do any of these are 'Government-Authorized Exercisers of Force.' The sole authority to use force is what makes a government sovereign. We, the people, have delegated that sovereignty to the government. Conditionally. It's ok for the government to delegate that power further, but only within the exact boundaries we set for the government. *We* gave the government power. It doesn't inherently possess it.

These contractors wield power that the government has passed to them, so they are bound like the government is. This prevents rogue actors from acting as if they can do whatever they want with impunity. It also prevents any government official or agency from using contracted or deputized actors to commit acts they couldn't carry out themselves.

*Article I, Section 2.B.1($c_2$). Entities with Monopolistic Control Over Necessities*

> Entities that hold significant influence or control over goods or services required for life, bodily autonomy, or normal participation in civic life are considered Entities with Monopolistic Control Over Necessities. Significant influence or control means the entity can control or erect barriers to entry into the market, set prices or restrict supply independently of competitive forces, or control at least sixty (60) percent of the market share within the relevant market. They are bound by the constitutional limitations on government. Examples include utilities, banks, cell service providers, internet service providers, dominant manufacturers, wholesalers, or retailers with controlling market share, and similar entities.

Some goods and services are necessary for survival. Diabetic people need insulin. It's virtually impossible to survive in the United States without a cell phone and internet access

today. Many employers require direct deposit, making a bank account not only a convenience and a good idea, but also necessary for full access to the labor market.

Every day, we face a lack of choice in our internet providers. Banks and utility companies force terms of service on a take-it-or-leave-it basis. Some pharmaceutical companies artificially inflate prices, effectively denying access to those who can't afford the drugs they manufacture. Pharmacy benefit managers refuse to cover certain medications, which deprives patients of needed and otherwise available remedies.

These are just a few examples of Entities with Monopolistic Control Over Necessities. These aren't examples of companies that are denying you a choice of color for your Model T; they are companies that are selling goods and services that are necessities of daily life. They can also force you to take whatever deal they offer; you have no meaningful choice or negotiating power.

These actors exercise *coercive* power. The relationship between them and the end users of their products and services is not equal. They provide an essential good or service; the consumer has no meaningful choice.

Sure, I can get mad that the bank charges me a fee for the privilege of storing my money with them (which they lend out for a profit). Still, if I refuse to do business with them, my access to labor and society is significantly curtailed. On the other hand, from their perspective, if I walk away in protest... nothing happens. We are not on an equal footing. Since we aren't, they have *coercive* power.

In today's marketplace, manufacturers like 3M or Unilever and distributors like Amazon control so much of the economy that an individual's actions, even a committed group's actions, are unlikely to have any measurable effect on them.

The coercive power these organizations wield lets them create policies that effectively function as laws. It is *de facto* legislative power. While it is not equal in force to duly enacted laws from the government, it is legislative in nature, if not origin.

When Congress exercises legislative power, it does so because the citizens delegated that power to it. No such delegation happened for these coercive third parties; they assumed the power. It's a sovereign power. The citizens are the ultimate sovereigns in the United States.

Coercive monopolies act like the government, using sovereign legislative power, so they are bound by the same rules as the government.

*Article I, Section 2.B.1($c_3$). Employers*

Employers wield unequal coercive economic power over their employees. They are therefore bound by the constitutional limitations on government regarding employees' personal behavior and autonomy. Employers retain the right to regulate on-duty conduct that legitimately reflects on the company, provided that 'on-duty' is not construed so broadly as to deny employees a personal sphere. These obligations apply to both direct and contract employment.

The relationship between an employer and an employee is inherently unequal. An employee can quit, but they do so at the risk of their livelihood. Or their health insurance. Or their paid time off. It's the same in kind as saying, "A citizen can defy a police officer who exceeds their authority." It's technically possible, but practically dangerous.

And, as in our customer-bank example above, if the employee quits, there's always someone else willing to take the job (or almost always). But there's not always another employer willing to take on a new hire. The employer-employee dynamic is the same as the monopoly's: one side (the employer) holds disproportionate power over the other.

Like monopolies, companies exercise power over their employees in the same way that governments exercise legislative power. But they also exercise judicial power, and they can do so without reliance on due process, if we allow them to.

Today, people get fired for exercising their free speech *outside the workplace and without reference to their employer*. Someone gets mad, rallies others online, and pressures the employer to take action. We've seen it over and over. We applaud when we dislike the speaker and call it 'cancel culture' when we don't. But either way, the root issue is the same: no employer should have the power to punish employees for lawful speech outside of work.

Employers sometimes demand social media passwords during the hiring process. Is that reasonable?

It's not just speech, either. Employers exert coercive power over workers' time, privacy, and autonomy. That legislative/judicial power has to be constitutionally bounded when it is exercised, just as it is when government does.

Nothing here prevents employers from managing performance or professional conduct. In fact, the text explicitly retains that power for the employer. All it does is draw a line between the employee's work duties, which are fair game for managerial oversight, and the employee's personal life and autonomy, which are sacred and protected.

### *Article I, Section 2.B.2. Civil Rights*

> All Persons within the United States are guaranteed Civil Rights under this Charter. These Civil Rights give legal force to their Natural Rights. Those Rights include:

The key points are the phrase "All Persons within the United States" and the word "include."

The first makes explicit that civil rights apply to everyone the government has power over, not just citizens. It relies on the definition of personhood, which we have already discussed.[15] If the state can exert power over someone, that person must be protected by the limits on that power. It isn't only citizens who can be affected by the state, so legal protections can't be limited only to them.

[15] The text of the **National Charter of the United States** (unratified)**,** Article I, Section 2.A.1. Personhood explains personhood. All humans within the jurisdiction of the United States are considered legal persons, beginning at birth.

Article I, Section 2.B.2(a). Right to Life

> Every Person has the Right to life and to be free from unlawful killing.

This is straightforward. People are protected from unlawful killing.

> Lawful exceptions may include killing in military service, killing in self-defense, or killing in the defense of others. They also certainly include deaths occurring in the course of lawful military or civil service.

Everyone has a right to life, but there are instances where killing can be lawful. This subclause lays out examples. Notice the use of "may," rather than "are." That's because I can't foresee every possible scenario where killing may be lawful, but I've shown examples of the kinds of things that are included. Lawful military or civil service, in this context, includes not only killing but dying in service. That's to prevent wrongful death claims for people drafted into service. Those deaths are tragic. They also sometimes happen. When they do, they aren't violations of civil rights.

I've intentionally avoided addressing capital punishment. The issue remains a topic of debate. The use of "may" preserves the ability of Congress to authorize it.

> Nothing in this section prevents accountability for unlawful conduct that causes death.

This is the failsafe. It blocks any attempt to claim that "lawful service" justifies war crimes, negligence, reckless endangerment (beyond the inherent risks of duty), or other unlawful

conduct that causes death. The government can still be liable for the wrongful death of a service member.

Article I, Section 2.B.2(b). Right to Bodily Autonomy.

> Every Person controls their own body. Every Person has the Right to make personal decisions about their medical care, physical appearance, and self-identification. They are protected from abuse and can make reproductive choices.

Every person is equal. That's a foundational principle of this Charter. Anyone who can unilaterally decide what *another* person does with their body is not their equal. They are dominant. Because this Charter insists on equality, it must logically insist that only *I* can make decisions about my body and only *you* can make decisions about yours. That's called Bodily Autonomy, and it is expressed here as a civil right.

Abuse is out. Torture's out. Second and third-party decisions about medical care and reproduction are out.

It also follows that only I can decide how I understand my body and sexuality. I can't insist that anyone recognize or share that understanding, but I alone determine what it is.

*Article I, Section 2.B.2($b_1$). State-Intervention Standard.*

> The government may intervene in personal decisions only when a Person is experiencing a mental crisis or other intellectual condition that renders them unable to make rational, self-directed choices. The mere fact that a decision is risky or may result in self-harm is not sufficient grounds for intervention, so long as the Person is

> capable of informed and rational judgment. Acts of protest, including hunger strikes or similar conduct, are expressions of autonomy and may not be interfered with. A Person's decision to enter hospice care or make other permanent decisions about the course of their life shall be respected, provided they possess the capacity for rational self-determination.

Sometimes, there's a need to interfere with this autonomy. The only legitimate reason is when someone is incapable of making informed decisions in their own best interests. Minors are one group of that sort, and they get discussed further down, but those who are mentally or emotionally incapable of rational and informed decisions are the other. The question becomes, when is it okay for the state to intervene? This paragraph lays it out. The state may only intervene when the person involved is unable to make rational, self-directed choices.

Throughout this Charter, I avoid the "state-interest" test. I'll do the same here. The government exists to secure rights. It can have no interests of its own. So, in whose interests can the state act in this case?

We've already said that the only party with a legitimate interest is the person whose body is involved. So, the state can only act on the person's behalf. Parents, children, friends, neighbors, employers, and so on are irrelevant. This is important because those who care about us might claim we aren't capable of responsible decision-making if we decide to take a risk, but choosing risk doesn't automatically mean irrationality. Furthermore, choosing to forego a long illness, or choosing to make an act of protest by hunger strike, or choosing to

enter hospice care are not evidence of mental incapacity on their own, no matter how much our circle of people loves us.

These can be brutal, difficult decisions. They might even be rash ones, like refusing to take reasonable precautions during a pandemic. Onlookers may think these decisions are foolish, but as long as the person making them is capable of rational decisions, they are not evidence of mental incapacity. So, those decisions are protected. This subclause affirms our rights to make even risky or detrimental decisions.

*Article I, Section 2.B.2($b_2$). Religious or Cultural Practices.*

> When religious or cultural practices involve body modifications performed on others who are incapable of giving or withholding consent, such practices are only permissible when they do not cause permanent loss of physical function, capacity, or lasting trauma. Practices that permanently impair or remove bodily capacity, sexual pleasure, or autonomy are prohibited. This Charter distinguishes between cultural expression and irreversible harm.

The line the Charter draws is capacity. What does that mean? It means that, if a body modification causes no impairment to the organ or body structure's function, it's okay. That is, as long as it *does not also* impair the person's autonomy in the future.

A great example of this is piercing an infant's ears. It's a common practice. The infant didn't get a say; someone just showed up and poked a hole through their earlobe. However, an infant is obviously a minor and incapable of deciding on the practice for themself. That might seem to rule it out. But nothing about an ear piercing reduces the function of the ear.

Nothing about it reduces the infant's autonomy in the future. On that basis, the practice passes the test.

On the other hand, the practice of Female Genital Mutilation (FGM) denies a female pleasure in the future. The structure is permanently impaired. The procedure has denied her a degree of sexual autonomy in the future. She can never engage in sexual pleasure, even if she wants to. So, in that case, FGM would not be acceptable.

*Article I, Section 2.B.2(b3). Minors.*

> Parents or legal guardians may make decisions for minors, including cultural or symbolic practices, provided those decisions do not cause permanent harm or suppress the minor's future autonomy. As minors grow, their expressed views shall be given increasing weight. By age sixteen, a minor is presumed competent to make personal decisions unless proven otherwise through a lawful process.

Parents or legal guardians of minors *do* have an interest in those minors, at least to some extent. They exercise authority as a temporary proxy for a developing person's autonomy. An infant is utterly incapable of making its own decisions. But as the infant grows, they develop a greater ability to understand choices and their consequences. They gradually gain the capacity to make more informed choices. A twelve-year-old is fully capable of understanding the ramifications of this or that fashion choice. They can make those decisions. On the other hand, that same twelve-year-old is *not* yet ready to understand the longer-term consequences of a body-modification surgery involving splitting their tongue. By around sixteen years old, most people can make most decisions.

That being the case, parents or guardians must make decisions on behalf of their wards when they can't. They need to explain and advise as understanding grows. And when their ward has developed enough, they have to make the hard choice to stand back and let them choose for themselves.

Article I, Section 2.B.2(c). Freedom of Movement.

> Every Person has the Right to travel freely within the country and to leave it. This Right may only be restricted following arrest or lawful conviction of a crime.

No one gets to enter private areas without permission, but travel in public places shouldn't be restricted in a free society.

Maybe it *shouldn't* be, but our history shows that at times or for certain people, it has been. Freedom of movement without trial or due process has been restricted in the Chinese Exclusion Acts, Black Codes, Japanese Internments, and more.

As a series of cautionary tales, authoritarian states *outside* the U.S. have set up internal checkpoints to keep citizens in a fixed area.

Most of the time, travel restrictions are less dramatic, but the principle is the same – the government is deciding where you can and can't go. Local officials sometimes declare certain areas "off-limits" to prevent assembly and protest, for example.

These restrictions are the opposite of freedom. They also violate the Universal Declaration of Human Rights,[16] which the United States championed. Since travel restrictions are inherently authoritarian, they are tightly constrained under this Charter.

Temporary restriction is permissible within the terms of this subclause.

Local and federal government officials may bar movement through tightly defined areas for minimal durations to control foot or vehicle traffic around crime scenes, large events, hazardous areas, and similar sites. They may only do so when necessary to prevent likely and imminent harm to life or bodily autonomy of the People, gather evidence for transport, or to protect the property of the People.

A tightly defined area is only as large as necessary to protect evidence and ensure the safety of victims trapped in the affected area and/or the first responders on site. It does not include buffer zones or schemes designed to create distance from or restrict visibility of the area in question. Limited duration means that the protected area is set apart only until the imminent danger, investigation, rescue, or recovery of any evidence or deceased Persons is concluded.

16 **Universal Declaration of Human Rights (UDHR),** United Nations General Assembly Resolution 217, Third General Assembly, Part A (December 10, 1948). *See especially* Article 13.

All such areas are subject to mandatory judicial review in the district court with jurisdiction twenty-four (24) hours after their establishment, regardless of whether the travel restriction remains in effect at that time. The court must review whether the restriction was narrowly tailored at the time it was imposed. It must make the same determination for ongoing restriction. For ongoing zones of restriction, the court must conduct supplementary reviews every twenty-four (24) hours until a final hearing after the zone of restriction has been lifted. Areas restricted for the purposes of law enforcement or other emergency response are exempt from mandatory review only if they are small enough in area that an adult could walk around the area in less than ten (10) minutes, the area does not block the sole legal means of ingress or egress to or from another contiguous area, activity in the entire area can be viewed from the perimeter of the restricted zone, and the restriction lasts fewer than four (4) hours in total. This exemption from mandatory review does not confer immunity from independent review.

Such restrictions cannot be used under any circumstances for the purpose of denying or restricting the Rights of protest or peaceful assembly.

This right shall not be construed to allow unfettered access to restricted or secure areas like prisons or military bases. It also shall not extend to a right to enter restricted airspace.

But what about restrictions to keep people or property safe?

Here, the language remains flexible while still putting clear guidelines in place that sharply limit duration and area. With that said, what are legitimate reasons for these kinds of restrictions? The key phrase is "likely and imminent harm to life or bodily autonomy of the People, gather evidence for transport, or to protect the property of the People." Nothing about the needs of the state. Nothing about security (although the language does explicitly include crime scenes).

What does it say, then?

First, the area has to be as compact as possible while still protecting the health and safety of the humans involved in operations within it. If it's put in place for the gathering of evidence, it can only cover the area where the evidence actually is. It also explicitly bans the use of "buffer zones," which could be used to shield abuses from view.

It also limits the duration of a restriction on movement. The restriction can't be indefinite. It has to end once the legally authorized purpose has been completed.

And every time an area is restricted, the courts will review it. The only exceptions are truly localized areas that don't restrict anyone from going around the zone and that last less than four hours. And even those *can* be reviewed; they just aren't subject to the automatic, mandatory review.

"But Gary, the cops don't have time to call the judge before locking down an active shooting site." And the Charter doesn't ask them to. They have to appear before a judge within 24 hours. They don't have to get preclearance, but they do have to justify their choices. And if

the restriction is one of those rare ones that has to persist, they have to come back every day until it's lifted. This isn't a wholesale micromanagement of the government, but it *is* an accountability mechanism to ensure that the people's right to movement is curtailed to the slightest degree possible.

The last sentence puts a common-sense provision to protect secure sites. This is necessary to keep John Q. Public from demanding access to Fort Leavenworth, using this right as a shield.

Article I, Section 2.B.2(d). Protection from Enslavement or Involuntary Servitude.

> Slavery and involuntary servitude are prohibited except as punishment for a crime, and even then may not violate the Rights to Life or Bodily Autonomy or produce commercial gain.

On December 6, 1865, the United States ratified the Thirteenth Amendment. It outlawed slavery and involuntary servitude in the United States, except as a punishment for crime.[17] I have copied that ban here.

Not all humans are good people. I suppose that fact's made evident by the very need for a provision like this.

[17] **Constitution of 1789,** Amendment XIII, Section 1: "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

Historically, the exception that allows involuntary servitude as a punishment for crime has been a back door to slavery. Convict leasing. Chain gangs. Debt bondage. Even now, inmates are compelled to work, often for little or no pay.

Today, incarcerated people carry out a range of tasks from farming to manufacturing to fighting wildfires. What's worse, their labor benefits the state or private prison companies, which creates a financial incentive to imprison people.

The morality of that is already questionable, at best. Coerced labor is exploitation, and there's no logical way to argue otherwise. However, it is made exponentially worse by the fact that somewhere between 1% and 2% of the prison population is conservatively estimated to be wrongly convicted. It's terrible enough to be convicted of a crime you didn't commit. To be then made into a slave of the state compounds the injustice.

The United States (like many other nations) has a history of prison labor. The American people have come to expect prison labor. We believe those incarcerated in our prisons are deeply immoral. When we put them to work, we can't let ourselves become what we believe them to be.

The Thirteenth Amendment created a loophole; this closes it. Plus, it does not allow the state to risk the life or limb of inmates in forced labor.

Conscription for military or civil service in preparation for, or in time of, war is not considered enslavement or involuntary servitude.

This Charter makes one exception to the ban on involuntary service. It doesn't take much imagination to wonder how this ban matches up with conscription. During wartime, the survival of the nation and protection of the people may require mobilizing more of the population for defense than an all-volunteer service can support. Conscripts into either the military or civil service under these conditions are not considered involuntary servants according to this Charter.

### *Article I, Section 2.B.2($d_1$). Unavailability of Consent*

All labor performed by incarcerated persons must be understood as involuntary. The circumstances of incarceration preclude meaningful consent.

We already understand that there's no way to be sure that an incarcerated person gives consent in the matter of giving or receiving sexual pleasure. They may. But they may also be coerced and lie about consent to avoid recriminations.

If that's true for sexual favors, it's also necessarily true about labor. We must assume prison labor is forced labor. It may well be voluntary, but there is no way to know for sure.

### *Article I, Section 2.B.2($d_2$). Incarcerated Labor Compensation.*

Any value generated by incarcerated labor must be placed in a secure, interest-bearing trust for the incarcerated Person, disbursed upon release or to a beneficiary upon death. If the prison includes a paid commissary, all income must be made available for use in that commissary during the Person's incarceration. The Government may not profit.

The reason for this is twofold. First, coerced and unpaid labor is slave labor. Second, the profit motive incentivizes incarceration for minor offenses. Making the government hand over any value generated by the prisoner eliminates that motive.

How can the state logically condemn someone for theft or murder while participating in slavery?

*Article I, Section 2.B.2($d_3$). Prohibition on Government Benefit*

> The Government may not profit, nor may it attempt to cover its carceral expenses from revenues generated by incarcerated Persons.

Paying for incarceration is a burden that governments must bear. A government should never deprive someone of their liberty through coercion, then demand that they pay for their upkeep. It is simply unacceptable in civilized society.

"You're sure a bleeding heart for convicted felons." No. I am a person who really believes in Natural Rights and stands behind that belief.

Article I, Section 2.B.2(e). Personal Security and Self-Defense.

> Every Person has the Right to Personal security and lawful self-defense. This right includes, but is not limited to, the right to bear arms.

Since colonial times, we have asserted the right to defend ourselves, our homes, and our families. Our own rights to life and bodily autonomy already hint at this right, and here it is explicitly stated. Each person may defend themselves. That right includes the right to own,

possess, carry, and use arms for the purpose of self-defense. While there has always been tension between the right to bear arms and the danger that right can imply, the basic right has been a part of our understanding since Colonial times. In fact, it was the attempted seizure of weapons at Lexington and Concord that led to the Revolutionary War.

Notice that this provision does not mention anything about a militia, regulated or not.[18] This is not about the state's security. It's about the individual's security.

> Congress may make laws allowing for the suspension or regulation of this Right, but only in carefully and narrowly defined circumstances. Those circumstances cannot include religious or political beliefs. Such regulation must exist solely to protect the Natural Rights of others—particularly the Rights to Life and Bodily Autonomy—and must use the least restrictive means available, with its scope, application, and purpose clearly defined.

Because this right touches not only the individual's rights to life and bodily autonomy, but those of others, as well, it can't be absolute. There has to be a mechanism to regulate responsible use and respect for the rights of others. This clause allows Congress to have that power. Congress can legislate regulations, but they have to serve the purpose of protecting others' rights. Not only that, but those regulations have to be as non-intrusive as possible.

[18] *Compare to* **Constitution of 1789**, Amendment II: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

Article I, Section 2.B.2(f). Equality of Rights.

> Everyone is equal under the law. No Person may be treated unequally under the law based on sex, race, religion, beliefs, sexual orientation, gender identity, or any other distinction not grounded in legitimate constitutional purpose. This Charter assumes laws should protect Rights, not take them away. No Right may be restricted unless the Charter authorizes the restriction.

Every. Person. Is. Entitled. To. Equal. Treatment. Under. The. Law.

It doesn't matter if they have pink hair. It doesn't matter who they love. If they believe the Earth is flat – so what? They're left-handed. They have heterochromia. They're Pastafarians. None of that matters.

The phrase "or any other distinction not grounded in legitimate constitutional purpose" is intentionally open-ended. Let's talk about what a "legitimate constitutional purpose" is. This Charter exists to form a government whose role is to protect rights. Logically, a legitimate constitutional purpose is one that preserves rights. Tying any distinction to that definition future-proofs this right, shielding against discrimination even before new lines of identity or marginalization are fully understood.

But this isn't just a non-discrimination clause. It flips the legal burden and yokes the government, instead. A person doesn't have to show unfair treatment. The state must justify *unequal* treatment as a defense of someone else's rights. That's the only constitutionally valid reason for making the distinction.

Remember, the Preamble says that securing natural rights is the sole purpose of government. The state has no interests. Never. Not for any reason. Administrative convenience and tradition are irrelevant. Cost savings? Not good enough. Cultural discomfort? Nope.

The government has to show that a distinction *actually* safeguards someone's rights.

This isn't just more moral. It's more honest. Governments (not just ours, but ours is guilty, too) have a long history of pretending some groups are less worthy of rights. This Charter ends that lie.

We believe that all are equal.[19]

Article I, Section 2.B.2(g). Due Process.

> No Person may be deprived of life, liberty, or property without due process of law, which includes, at a minimum, notice of charges against them, a fair hearing, and a chance to review and answer all testimony and evidence, and sufficient time to respond. It must also include the right to competent legal representation, an unbiased judge, and, if applicable, an impartial jury. Finally, all hearings must be held within a reasonable proximity to the place where the alleged unlawful activity occurred.

[19] *See* **National Charter of the United States** (unratified),
Preamble: "Today, we, the Citizens of the United States of America, recognize that every person born is both unique and equal to every other."

This is a significant expansion from the language in the Fifth and Fourteenth Amendments of the Constitution of 1789.[20] Though those clauses are strong and have served us well, they are not explicit about what "due process" means. When gaps like this exist, the government is forced to make up its own limits. That generally ends poorly. The government will inevitably define its own limits expansively.

A glaring example of this is the Japanese Internment and the subsequent case *Korematsu v. United States*. President Roosevelt filled the vacuum created by the vague definition by asserting an emergency doctrine via executive order, which completely eclipsed due process. The Supreme Court then leaned on the Political Questions doctrine to avoid ruling as it should have. The Court held that general military orders issued under the authority of Executive Order 9066 were enough on their own to justify the detention of Japanese Americans. [21]

This isn't just something that happens in wartime. Another example is the way detention of undocumented immigrants is handled.

In our current system, people are held indefinitely in immigration proceedings with limited access to counsel. These detentions are labeled as "civil" detentions to avoid the protections of criminal due process. Still, this provision lays out the minimum requirements of due process. There is no distinction between criminal, civil, or

[20] Compare to the **Constitution of 1789**, Amendment V: "nor deprived of life, liberty, or property, without due process of law," and **Ibid.**, Amendment XIV: "nor shall any State deprive any person of life, liberty, or property, without due process of law…."
[21] *Korematsu v. United State*s, **Volume 323, United States Reports,** opinion beginning on page 214 (1944).

administrative detention. *Any* loss of life, liberty, or property requires due process, and it *must* meet the minimum standards listed here.

Article I, Section 2.B.2(h). Habeas Corpus.

> Every Person has the Right to challenge their detention before a judge. Anyone held by the government must be brought before a judge within seventy-two (72) hours. The Right to a lawyer begins at the time of detention. This Right may not be suspended.

This right aligns with Due Process under the law. It technically is *part* of due process rights. So why even include it separately? Unfortunately, the United States government has a sorry history of finding loopholes to get around this right.

At the risk of sounding repetitive, over 100,000 Japanese-Americans were held in internment camps without meaningful habeas corpus during WWII. Military orders alone were seen as sufficient to round people up and put them in camps based solely on their ancestry. [22]

Then there is José Padilla. Before diving into his case, it's important to remember that bad defendants make good law. That is, constitutional protection applied to even the worst or least sympathetic defendants makes everyone more secure. In multiple cases involving Padilla, the government employed various technical and procedural dismissals to avoid adverse rulings. He was detained in May of 2002 as a material witness. The government

[22] In *Korematsu v. United States*, **Volume 323, United States Reports,** opinion begins at page 214 (1944), the court didn't rule directly on habeas corpus, since that was not material to the case. However, by finding that the underlying detention was constitutional, they effectively made habeas corpus petitions futile.

accused him of participating in a dirty bomb plot, though they never charged him for that. In June, he was designated an enemy combatant and transferred to military custody (even though he was detained at O'Hare International Airport, not on the battlefield).

His lawyers filed a habeas petition in *Rumsfeld v. Padilla*, but the Supreme Court dismissed it. They ruled that it should have been filed in South Carolina. [23] His team refiled his petition in South Carolina as Padilla v. Bush (later *Padilla v. Hanft*). [24]The government returned him to civilian custody, rendering his petition irrelevant in late 2005 or early 2006. The government used this sequence to deny him the right to habeas corpus. The government didn't suspend the writ. Instead, it used strategic transfers to avoid adverse rulings and relied on technical procedural grounds rather than the merits of his detention.

Just like with the broader Due Process argument I laid out before, this isn't only a matter for the military or during times of war. It's an ongoing problem elsewhere. It's especially true with "civil" detentions.

The concept of habeas corpus predates our Republic. These protections are not a new addition to the legal landscape. I will point out that in the modern day, the Founders would likely be labeled terrorists by the British. In their own time and context, unchallengeable arrests and detentions were not theoretical; they happened in the colonies.

Likewise, during the Civil War, President Lincoln, whom we today lionize, suspended habeas corpus. To say that the move was controversial is underselling it. Later, the

[23] *Rumsfeld v. Padilla*, **Volume 542, United States Reports,** opinion begins at page 426 (2004).
[24] *Padilla v. Hanft,* **Volume 547, United States Reports,** opinion begins at page 1062 (2006).

Supreme Court never ruled on the suspension's legality, but it severely limited what it could entail.

Today, immigrants are entitled to the same due process rights as everyone else.[25] In principle, that is. In practice, those rights shrink when Congress invokes its plenary power over immigration. In fact, Congress has delegated enforcement of that plenary power to the Executive Branch, so either branch can shrink those rights. Immigration detention is defined as "civil." That gives Congress and the Executive Branch wiggle room to sidestep many of the procedural protections that would apply in a criminal context. Then, since these "civil" detentions were created out of Congress using its plenary power—or out of the Executive using the power delegated to it by Congress—the courts defer, because they consider the matter unreviewable.[26]

In the end, due process, including habeas corpus, is weakened or ignored. People in civil immigration custody don't have the same protections as those in criminal detention. The Supreme Court has endorsed this posture. It has effectively said, "You have rights until we say you don't." That's not their language, of course. But a "right" that is context-dependent or may be narrowed in scope isn't really a right, is it?

With post-conviction detentions, we have enacted laws that "preserve" due process requirements, but make them nearly impossible to access. They erect layers of procedural

[25] *Yick Wo v. Hopkins,* **Volume 118, United States Reports,** opinion begins at page 356 (1886).
[26] *Fong Yue Ting v. United States*, **Volume 149, United States Reports,** opinion begins at page 698 (1893).

hurdles that have to be overcome before a person can challenge their detention in federal court. Federal courts can grant relief to prisoners only in limited circumstances.[27]

The language in this Charter is tight. Every person has a right to challenge their detention. There is no distinction between criminal and civil.

A habeas hearing must occur within 72 hours. Is your detainee arrested on a long weekend? The court's convenience is irrelevant. The right to counsel begins at the time of arrest or detention, not when the person is charged.

Due process and habeas corpus matter. They protect everyone, or they protect no one. This provision accepts that reality. This isn't new legal theory. It is just refreshing and updating the right.

Article I, Section 2.B.2(i). No Bills of Attainder.

The Government may not enact a Bill of Attainder.

This right has been part of our legal landscape all along. The courts have relied on it in several instances. It protected professionals in the post-Civil War era.[28] These constitutional protections were invoked in *United States v. Lovett,*[29] as well as in *United States v. Brown.* [30] Concerns about bills of attainder protected recipients of funds from the

[27] **Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA)**, Published in **Volume 110, United States Statutes at Large,** beginning at page 1214. This reflects the law as originally enacted by Congress, before any portions are later reorganized or codified into the United States Code.
[28] *Ex parte Garland,* **Volume 71, United States Reports,** opinion begins at page 333 (1866); and *Cummings v. Missouri,* **Volume 71, United States Reports,** opinion begins at page 277 (1867).
[29] *United States v. Lovett*, **Volume 328, United States Reports,** opinion begins at page 303 (1946).
[30] *United States v. Brown*, **Volume 381, United States Reports,** opinion begins at page 437 (1965).

Troubled Asset Relief Program (TARP). [31] Finally, it has been invoked to oppose President Trump's Executive Order against Perkins Coie. [32]

Bills of Attainder are laws that single out people or groups for punishment without a judicial trial. They do it by literally naming them in law, or by naming specific behavior so narrowly that it can only apply to the target. At best, it's unfair. In practice, it's much worse than merely unfair. It's authoritarian and indefensible in a free Republic.

Article I, Section 2.B.2(j). No Ex Post Facto Laws.

> No Person may be prosecuted or punished for an act that was not illegal at the time it was committed. Penalties or other punishments established by law may not be applied retroactively, except where the new penalty is more lenient than the one it replaces.

If an act isn't illegal when it is committed, there is no foul. Period. That needs no special explanation.

I will offer a single point of clarification: this does not use the word "crime" anywhere. It applies to *any* illegality, whether civil or criminal. The state can't write the rules after the fact. We may believe the rule should have existed all along. That belief doesn't justify punishing someone retroactively. That's fundamentally unfair.

[31] This raised bill of attainder concerns, but it never went to court, since the legislation was dropped.
[32] See **Executive Order Number 14230: Addressing Risks from Perkins Coie LLP,** Donald J. Trump (March 6, 2025). Compiled at **Title 3, Code of Federal Regulations,** beginning at page 11781 (2025). Portions of this Executive Order were enjoined by the U.S. District Court for the District of Columbia on May 2, 2025.

This right also extends to punishments. The state can't impose a harsher penalty after an act is committed than was originally in the law. We can and do change penalties for criminal and civil offenses all the time. That's fine, but they don't apply retroactively. The exception is that if we collectively decide a penalty in place is too harsh, and we replace it with something more lenient, the convicted person should have the right to petition for the more lenient punishment.

The goalposts of justice have to be firmly planted on the field of play.

Article I, Section 2.B.2(k). Right to Domestic Sovereignty.

> No Person shall be compelled to provide lodging, sustenance, or other domestic resources to any officer, agent, or member of the Government. Voluntary hospitality remains a protected expression of personal choice and may not be presumed, imposed, or coerced.

The British Parliament passed the Quartering Act of 1765. It was designed as a cost-sharing or cost-shifting measure to help provide for the upkeep of British soldiers in the colonies following the French and Indian War. It required colonial assemblies to provide housing in public facilities – and in private homes if space ran out. It was unpopular and led to widespread resentment.

In response to the Boston Tea Party, Parliament passed the Quartering Act of 1774. This was nakedly retributive and expanded the military's presence in civilian areas to increase

surveillance, intimidation, and control. It was the ultimate in government surveillance and intimidation.

Both Quartering Acts were on the Founders' minds when they drafted the Bill of Rights.

We think of this as relating to soldiers, which it did. However, it's vital to remember that Redcoats weren't only warfighters. They were the full agents of the crown – spies, police, and riot control. The Quartering Acts, especially the Quartering Act of 1774, were expressions of that full scope of their role. Having Redcoats in your home meant constant monitoring of your conversations ("Did I just hear you criticize King George?"), visitors ("Was that John Hancock? Isn't there a warrant for his arrest?"), reading materials ("I see a pamphlet here from the Sons of Liberty. That's sedition!"), and so on. You had one or more spies in your house, and to add insult to injury, you had to feed and shelter them.

The Founders were so angry about this that they listed it as one of the grievances in the Declaration of Independence: "For Quartering large bodies of armed troops among us."[33] It was serious enough to warrant explicit prohibition in the Bill of Rights, even twelve years after the fact.[34]

Since then, there has been little litigation on the Third Amendment. However, there is one significant ruling in *Engblom v. Carey*. In that case, National Guard troops were housed in the quarters of striking corrections officers. The Second Circuit ruled that this could be a

[33] **Declaration of Independence,** drafted by Thomas Jefferson and adopted by the Second Continental Congress. (United States of America, July 4, 1776). This is the 24th grievance listed against King George III as justification for independence.
[34] *See* **Constitution of 1789,** Amendment III.

violation of the Third Amendment if the corrections officers had a sufficient property interest. The case was remanded, but it was settled before a final ruling. [35]

The modern day doesn't rely on the literal quartering of troops. It is easy to imagine requirements for civilians to allow police, IRS agents, the FBI, or any number of other government agencies to use their resources (internet, electricity, water), or to quarter in their homes, especially in emergency circumstances.

Just as the colonists needed protection from "surveillance through presence," so do modern Americans.

There have been attempts to invoke the Third Amendment against police staying in homes during investigations or the government using private property for surveillance. In *Estate of Bennett v. Wainwright (2008)*[36] the Court ruled that claiming police presence in a home during surveillance was "a far-fetched, metaphorical application" of the Third Amendment, ignoring the historical use of British soldiery for exactly that purpose.

*Mitchell v. City of Henderson*[37] affirmed the holding that police officers are not soldiers, and that presence in a home for less than twenty-four hours does not constitute quartering. This is egregious. The court focused on uniform rather than function. It ignored the fact that the 1774 Act was about surveillance, not sleepovers. It is exactly the behavior the original Third Amendment protection was designed to thwart. If only King George had

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[35] *Engblom v. Carey*, **Volume 677, Federal Reporter, Second Series,** opinion begins at page 957 (Decided by the U.S. Court of Appeals for the Second Circuit, 1982).
[36] *Est. of D. Bennett, et al v. Wainwright,et al*, **Docket Number 07-2169** (U.S. Court of Appeals for the First Circuit, 2008).
[37] *Mitchell v. City of Henderson*, **Docket Number 2:13-cv-01154-APG-CWH, Westlaw citation number 427835** (Decided by the U.S. District Court for the District of Nevada, February 2, 2015).

thought to dress those Redcoats as Sheriffs and have them leave each home at the twenty-three-hour mark…. The arguments of the courts rest on trappings, not function, and they ignore the real-world history of the Quartering Acts, which were the basis for the Third Amendment in the first place.

The Charter's language here restores the original purpose of the Third Amendment and updates it for the modern day. The language here does several things. First, in the context of the broader Charter, especially Article I, Section 1.C, the protection is broadened so that it applies at all levels of government. Nor, under that same provision, can it be eliminated or reduced by a state of emergency. Second, it protects from intrusion by "any officer, agent, or member of the Government." Third, it extends beyond mere lodging and sustenance to "other domestic resources." That means the government can't commandeer your driveway, use your water, piggyback on your Wi-Fi, and so on.

"What if I *want* to offer those things to the government?" This provision specifically allows you to offer any of those things voluntarily but prohibits coercion.

The bottom line is simple. You can *offer* your home or resources to government agents, but they can't take them. And they *definitely* can't do so to intimidate you or spy on you.

Article I, Section 2.B.2(l). Right to Privacy and Property.

> Every Person has the right to privacy and control over their body, home, digital and physical documents, communications, data, and property.

This sentence is a baseline. It sets up the basic right, which is an echo of the Fourth Amendment,[38] updated to include digital privacy.

The founders were reacting to Writs of Assistance. They were general warrants that gave customs officials the power to search any premises. They didn't have to specify what they were looking for or establish any probable cause. These writs were valid for the lifetime of the monarch, and they could be transferred between officials. There was no judicial oversight. Worst of all, they gave officials a blank check to search anyone, anywhere. There was a principle in English law that "a man's house is his castle." The Founders felt that these writs violated that principle. It's difficult to argue that they were wrong.

Today, we have cars, cell phones, computers, cloud storage, and email. It defies common sense to suggest that the Founders would not have considered these "papers and effects" had they existed in the 18th century.

Both physical and digital searches require a judicial Warrant based on Probable Cause, explicitly describing the place, device, data category, or item to be examined or taken.

The expansive scope granted by Writs of Assistance was a tyrannical form of overreach. In response, they imposed a framework requiring evidence supported by an oath. They insisted on demonstrating probable cause. They also demanded specifics about what was to be searched, as well as who and what might be seized. All of this is straightforward and

[38] *Compare* **Constitution of 1789**, Amendment IV: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated...."

is a reasonable reaction to the fishing expeditions allowed under the Writs of Assistance. Every kid who has ever watched a crime procedural knows that police can't search your home without a warrant.

But digital property has proven murkier. Courts allow "consent" under police pressure.[39] They allow third parties to give consent.[40] If you share data with banks, cloud providers, or telecoms, it's likely not protected. Or, more accurately, not one single record or report based on that data is protected if anyone besides you generated it.

In *United States v. Miller*, the court found that there is no reasonable expectation of privacy in financial records shared with a bank.[41] Three years later, courts expanded that lack of privacy to what phone numbers an individual dials, because that information has been shared with the phone company.[42] In *Carpenter v. United States*, the Supreme Court created a narrow exception for cell phone location data. Though they ruled that the digital age requires some limits on third-party doctrine, they explicitly left the doctrine intact for most other applications.[43] In the wake of *Carpenter v. United States*, the requirements surrounding searches of cloud storage are in doubt. In fact, "in doubt" undersells the problem. Courts are all over the map in their interpretations, since *Carpenter* refused to fix what it acknowledged was broken.

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[39] See *Schneckloth v. Bustamonte*, **Volume 412, United States Reports,** opinion begins at page 218 (1973); and *United States v. Drayton,* **Volume 536, United States Reports,** opinion begins at page 194 (2002).
[40] See *United States v. Matlock,* **Volume 415, United States Reports,** opinion begins at page 164 (1974); and *Georgia v. Randolph,* **Volume 547, United States Reports,** opinion begins at page 103 (2006).
[41] *United States v. Miller,* **Volume 425, United States Reports,** opinion begins at page 435 (1976).
[42] *Smith v. Maryland,* **Volume 442, United States Reports,** opinion begins at page 735 (1979).
[43] *Carpenter v. United States*, **Volume 585, United States Reports** (2018). This volume is not yet published in final form. For the opinion, the reader may see https://supreme/justia.com/cases/federal/us/585/16-402, which the author of this commentary last visited in November 2025.

A quick review of all these cases makes it clear. There needs to be constitutional protection for the digital age. This language establishes it. It explicitly states that digital searches and seizures require the same procedural justification and judicial warrant as physical searches and seizures.

And to be crystal, rock-solid, clear: metadata is private.

Imagine that you dropped a letter in the mailbox. The U.S. Postal Service is a third party. We all know that mail can't be searched without a warrant. But your cloud storage could be. What the hell is the difference? There isn't one, and this Charter doesn't pretend that there is.

Article I, Section 2.B.2(m). Emergency Action.

> The government may act without a Warrant only briefly and only to prevent serious harm to another's rights;

In some ways, this is a continuation of Section B.2(l). This explains the very limited scope in which the government, primarily law enforcement, can act without a warrant to stop an immediate threat to other people. Critics of the limits on search and seizure will likely argue that those limits unreasonably tie the government's hands in emergencies. This is the answer to that argument. Government actors can intervene in real emergencies without a warrant, but they can only do so for as long as necessary to prevent serious harm to another person's rights.

actions must be strictly limited and promptly reviewed by a court within seventy-two (72) hours.

Any warrantless action must be limited. It's also subject to mandatory review within seventy-two hours. Officials can't just declare a threat to another's rights and swoop in, acting broadly and with impunity. They restrict their actions, and those actions are reviewed for legality within three days.

Officials acting in good faith within Charter-consistent training are not automatically liable even if a court later finds the action unlawful.

Critics will again argue that officers will be paralyzed, afraid to act, since every action is reviewable. This is their protection. It isn't the old (now abolished) qualified immunity. But they are protected as long as they are acting 1) in good faith and 2) within the training they are required to receive under Article I, Section 1.B.

So, to put together an example, let's assume that police have credible evidence that a particular bus, which is filled with passengers, has a bomb that will go off in one hour. The exact location and nature of the bomb is unknown, but it is reasonable to assume it may be carried on one's person. Police could, without waiting for a warrant (which would not arrive in time), stop the bus, search it, and every person on it. Within three days, their actions would be reviewed. As long as they didn't commit some other violation of rights in the process of their search, the search itself would be protected. Let's further assume, for this example, that one of the bus riders was walking in a manner that suggested something

might be concealed in their anatomy. Officers could probably even conduct a strip search under these circumstances. If it were later discovered that the passenger had a medical issue, they would not be able to hold the officers liable because they had acted in good faith and within the training provided to them. On the other hand, if officers subjected every passenger on the bus to that same invasive search, without trying other means first, those passengers might have a claim of civil rights violations, because that would almost certainly exceed the bounds of their training.

Article I, Section 2.B.2(n). In Rem Jurisdiction.

Legal action cannot be brought against property; in rem jurisdiction is invalid.

Multiple cases across many jurisdictions involve the seizure of assets that "may have been involved in crime."[44] These seizures are called "civil asset forfeitures." They rely on an obscure legal principle called *in rem* jurisdiction: a legal fiction that treats property as if it can be guilty of crimes.

That sentence is factual. It's also so absurd that my grammar checker couldn't make sense of it at first.

*In rem* is not new. It has its roots in piracy and customs cases, in which property had to be seized, but the owner couldn't be reached. Today, the principle has been twisted so that

[44] For specific cases and citations, an excellent resource is the Institute for Justice, which publishes reports detailing civil forfeitures.

property is seized even when the owner is available. That owner may not even have done anything. If someone else uses your car to commit a crime, your car is "guilty."

No, that's not a typo. It's literally how *in rem* works.

The fiction is ridiculous. I ate a triple-meat cheeseburger, which contributed to my overeating. Is the cheeseburger guilty of making me fat, or am I?

Beyond the nonsense, the practice violates the spirit, if not the letter, of protections against unreasonable searches and seizures. There are patchwork attempts to reform it, but they are inconsistent and incomplete.

This provision of the Charter eliminates the problem. It bans *in rem* jurisdiction entirely.

Article I, Section 2.B.2(o). Forfeiture Restrictions and Victim Restitution.

> The government cannot seize any property prior to conviction, except physical items necessary to conduct a good-faith prosecution, such as evidence, including weapons, documents, or contaminated clothing. Seizure of any other assets may occur only after conviction and must be accompanied by a separate judicial hearing for each asset to establish a direct connection to the offense.

Law enforcement can only seize property that is evidence of a crime until a person is convicted. They can't just take anything and everything – cars, homes, computers, etc. After a person is convicted, additional property can be seized, but each item requires a separate hearing, and law enforcement has the burden to show how that item is directly connected to the crime in question.

Property belonging to a person other than the convicted defendant may only be seized if it is material evidence of a crime.

If your sister borrows your car and uses it to rob a bank, the authorities don't get to keep your car, unless it is somehow evidence of the bank robbery. For example, if she simply drove it to the bank and ditched it there. It is still your car. If she drove it there and used it as a getaway car, they might be able to keep it until she is convicted if it is evidence.

If original ownership of property can be clearly established, that property must be returned to its rightful owner.

Even if they kept it as evidence, the authorities have to return the car your sister borrowed after she is convicted.

If not, any proceeds from the sale of seized assets must be distributed to the victims of the crime or donated to established victims' rights organizations. The cost of seizure, cataloging, or sale cannot be deducted from those proceeds. No jurisdiction, agency, or governmental body may retain or benefit from the sale or disposal of seized property.

Seizure should serve a clear purpose in upholding the law. It shouldn't be a means for an agency to fund itself. This language removes a perverse profit incentive for some jurisdictions to seize property for profit, rather than for the legitimate purposes of law enforcement.

Article I, Section 2.B.2(p). Eminent Domain.

Eminent Domain is limited to genuine public use, not commercial development.

This sentence affirmatively limits the exercise of Eminent Domain to public use, just like the "takings clause" of the Fifth Amendment.[45] It goes further, though. It explicitly denies the use of it to take property for commercial development.

Why is this necessary? The plain language of the Fifth Amendment doesn't technically preclude commercial use. In fact, it only says that *if the* government takes property for public use, the original owner must be fairly compensated. A strict textualist jurist could effectively rule, "I don't like it, but since this property was taken for commercial use, and since due process was requested and given, not only may the government take this and pass it to a commercial party, no compensation must be given." Now, that isn't the way the clause has been interpreted, but it could have been, if a strict textualist had chosen to do that. Instead, the scope has been widened from roads and military bases, and the like [46] to include railroads (which were privately owned, though certainly a public benefit). [47] It then

[45] **Constitution of 1789**, Amendment V: "…nor shall private property be taken for public use, without just compensation."
[46] *Kohl v. United States,* **Volume 91, United States Reports,** opinion begins at page 371 (1875): "It has not been seriously contended during the argument that the United States government is without power to appropriate lands or other property within the states for its own uses, and to enable it to perform its proper functions. Such an authority is essential to its independent existence and perpetuity. These cannot be preserved if the obstinacy of a private person, or if any other authority, can prevent the acquisition of the means or instruments by which alone governmental functions can be performed. The powers vested by the Constitution in the general government demand for their exercise the acquisition of lands in all the states. These are needed for forts, armories, and arsenals, for navy yards and lighthouses, for custom houses, post offices, and courthouses, and for other public uses. If the right to acquire property for such uses may be made a barren right by the unwillingness of property holders to sell, or by the action of a state prohibiting a sale to the federal government, the constitutional grants of power may be rendered nugatory, and the government is dependent for its practical existence upon the will of a state, or even upon that of a private citizen. This cannot be. No one doubts the existence in the state governments of the right of eminent domain -- a right distinct from and paramount to the right of ultimate ownership."
[47] See *Roberts v. Northern Pacific R. Co.,* **Volume 158, United States Reports,** opinion begins at page 1 (1895); *Chicago, Burlington & Quincy Railroad Co. v. Chicago*, **Volume 166, United States Reports,** opinion begins at page 226 (1897); *Hairston v. Danville & Western Ry. Co.*, **Volume 208, United States Reports,** opinion begins at page 598 (1908).

grew to encompass urban renewal projects. [48] It expanded further to allow the state to take from a landlord and transfer title to the tenants. [49] All of these expansions led to the decision in 2005 that made economic benefits "a permissible form of public use that justifies the government in seizing property from private citizens." [50]

There can be lots of debate about which of those examples are beneficial. What isn't really a matter of debate is that, if a developer works with a specific plan for "economic benefit," no property is safe. This renders private property non-existent. It's always subject to someone determining it might have a greater economic value in someone else's hands. Even at its most benign, Eminent Domain is oppressive to the property owner who is subjected to the taking. For this reason, commercial use should be banned outright. Public use by the government is the only legitimate purpose for its use.

Compensation must be equal to the higher of the inflation-adjusted original cost or average local market value, as averaged by obtaining three appraisals—one chosen by the owner, one chosen by the Person or entity seeking to seize the property, and one chosen by the Court.

This framework assures maximum value, within limits, to the property owner. That serves the dual purpose of ensuring they are fairly compensated and of deterring the government from taking property too readily.

[48] *Berman v. Parker,* **Volue 348, United States Reports,** opinion begins at page 26 (1954).
[49] *Hawaii Housing Authority v. Midkiff*, **Volume 467, United States Reports,** opinion starts at page 229 (1984).
[50] *Kelo v. City of New London,* **Volume 545, United States Reports,** opinion begins at page 469 (2005) (summarizing the Court's holding regarding the use of eminent domain for economic development).

Article I, Section 2.B.2(q). Use of Biometrics in Law Enforcement.

> Biometric data with a proven history of reliability and neutrality, such as fingerprints and DNA, may be used as evidence.

The use of biometrics has been a fundamental aspect of law enforcement for decades. At its best, it helps law enforcement find and convict the guilty. It can also help reverse wrongful convictions, when the state permits it. Fingerprinting has been in use in the U.S. since the early 1900s and is generally reliable. Similarly, DNA evidence has been in use since 1987. It, too, enjoys a reputation for reliability.

> Newer technologies may not be used until and unless they are affirmatively proven in no fewer than two large-scale blind studies to be both accurate and non-prejudicial. In this context, large-scale means a survey with a representative sample in both the control and test groups that is large and diverse enough to reflect the American population. All studies must be open to peer review for at least one year prior to adoption of the technology in question.

Still, newer means of biometric analysis continue to develop.

Anyone with a smartphone is familiar with facial recognition. They probably also know it doesn't work very well. My phone still hasn't figured out my face (maybe it's the beard). The stakes are higher in law enforcement. Facial recognition systematically misidentifies African American individuals and could lead to wrongful arrests and convictions. This is an

example of a promising, emergent technology that isn't yet ready for use outside the carefully controlled confines of the research and development lab.

Law enforcement must be accurate. The reason is two-fold. First, we want to catch the people responsible for crimes before they commit more. That's common sense.

I'd argue the second reason is even more critical. You might ask what would be more important than public safety. We are a nation that prides itself on defending rights. This Charter is explicitly an expression of that moral foundation. So the second, and more important reason is this: we must never use technology that tends to discriminate. Doing so is antithetical to who we claim to be.

The Charter places a burden on law enforcement to prove that any biometric data they use is both accurate and non-prejudicial. And it does more than merely say, "be fair." It lays down how to measure that fairness. Prove the tech works. At least twice. Show your work.

Some will argue that this ties the hands of law enforcement, while the technology is proven. But don't the American people deserve technology that works the way it is supposed to? Aren't we entitled to methods of policing that don't result in false positives? This is no blanket ban, or any ban, really. Police have had these DNA and fingerprints for only decades, yet they have been catching criminals for centuries.

Biometrics, if properly tested and vetted, can be enormously helpful. They definitely should be used when they are proven ready. Let's not kid ourselves, though. They aren't the only way to investigate crime or prove guilt.

Article I, Section 2.B.2(r). Protection from Self-Incrimination.

A person may not be compelled to speak or testify against themselves.

This clause reaffirms a right that every American knows well: the right to remain silent. You can't be forced to incriminate yourself.

One of the most well-known and fundamental rights under the Constitution of 1789 is the Fifth Amendment right protecting against self-incrimination.[51] Most Americans believe this right is absolute.

It isn't.

Courts have steadily weakened it.[52]

This protection applies in all settings where the Government may compel testimony, including criminal, civil, administrative, and legislative proceedings.

This subclause also makes clear that protection extends equally to all compelled testimony. It doesn't matter where or why that testimony is demanded.

Under current precedent, complete protection against self-incrimination only applies in criminal proceedings.[53] Other forums offer varying degrees.

[51] **Constitution of 1789**, Amendment V.
[52] *Baxter v. Palmigiano*, **Volume 425, United States Reports,** opinion begins at page 308 (1976); *Allen v. Illinois*, **Volume 478, United States Reports,** opinion begins at page 364 (1986); *McKune v. Lile*, **Volume 536, United States Reports,** opinion begins at page 24 (2002); *Hiibel v. Sixth Judicial Dist. Court of Nev., Humboldt Cty.,* **Volume 542, United States Reports,** opinion begins at page 177 (2004).
[53] In *Allen,* the court found that civil commitment proceedings don't require full Fifth Amendment protections because they are not criminal. Nonetheless, civil commitment proceedings can be used to deprive a person of their liberty. In *Baxter,* the Supreme Court ruled

That means you can remain silent if you're charged with a crime. You might not get as much protection if you're being sued. And what about a tax hearing? Testimony before Congress? Even though you see lawyers in Congressional hearings and hear witnesses invoke their Fifth Amendment rights, those rights aren't absolute in that forum.

A Person is not required to state that they are invoking this Right, and no adverse inference may be drawn from their silence.

In *Salinas v. Texas (2013)*, the Supreme Court ruled that prosecutors could use a defendant's silence against them at trial because he hadn't explicitly invoked it.[54] Three years earlier, in *Berghuis v. Thompkins (2010)*, the court held that silence alone does not invoke Miranda rights.[55] Effectively, the courts have created a legal trap requiring people to know the legal magic words to invoke rights they already have. It's bad enough on its face, but it disproportionately affects the poorly educated or legally untrained, who are least likely to know there's a specific formula required to claim their rights.

Besides, a right you have to claim or invoke isn't a right at all. It's a granted petition.

Silence shouldn't be a self-incrimination trap.

There is a question here that demands an answer, though. It comes up a lot in everyday conversation. If you have nothing to hide, why should you be afraid to speak?

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that, in civil proceedings, an opinion can be inferred based solely on silence. This renders the right more of a privilege, extended at the whim of the Court, when it deems the right applies.

[54] *Salinas v. Texas,* **Volume 570, United States Reports,** opinion begins at page 178 (2013).

[55] *Berghuis v. Thompkins*, **Volume 560, United States Reports,** opinion begins at page 370 (2010).

Have you ever been locked into an argument with someone really good at twisting what you said and making it sound like you said something that you didn't? Did they find ways to make it look like you were lying or were a hypocrite?

That's why this right exists.

> Refusal to provide records following a subpoena is not automatically protected. Such activity is the normal gathering of evidence, but it requires the same warrant and probable cause as any other search or seizure.

This provision upholds the "required records" doctrine.[56] These are records mandated by law for businesses or individuals to keep – for example, tax records or firearm registrations. That said, it restates the requirement for warrants and probable cause required for searches and seizures.[57]

Article I, Section 2.B.2(s). Presumption of Innocence and Non-Liability.

> A criminal or civil defendant is presumed to be not guilty or not liable unless proven otherwise in Court. The standard for conviction in a criminal trial is beyond a reasonable doubt, and the standard for liability in a civil trial is preponderance of the evidence.

[56] *Shapiro v. United States*, **Volume 335, United States Reports,** opinion begins at page 1 (1948) and *Baltimore City DSS v. Bouknight*, **Volume 493, United States Reports,** opinion begins at page 549 (1990).
[57] *See* **National Charter of the United States** (unratified), Article I, Section 2.B.2(l). Right to Privacy and Property.

This is not a new set of rights, simply an explicit restatement of the state of play now, as Americans understand it. The burdens of proof and the idea of "innocent until proven guilty" are now explicitly constitutional.

> No predictive algorithms may be used in law enforcement.

Predictive algorithms, almost by definition, assume guilt without evidence that a crime has been committed. They *predict* that the subject will commit a crime. It's in the name. Since that violates the fundamental concept of "innocent until proven guilty," that assumption can't be used for law enforcement purposes.

The 2002 sci-fi movie "Minority Report" warned of this.[58] What was speculative fiction then is now a real-world concern.

This provision is explicit: no punishment without proof, and no guilt without a committed crime. Full stop.

Article I, Section 2.B.2(t). Indictment by a Grand Jury.

*Article I, Section 2.B.2($t_1$). General Grand Jury Requirements*

> No Person may be held for trial on any felony without the approval of a Grand Jury Indictment, except for active-duty military personnel during wartime, and only for service-related offenses.

[58] **Minority Report,** directed by Steven Spielberg (DreamWorks Pictures, 2002).

This is a core right. It's not word-for-word, but it comes from the Constitution of 1789's Bill of Rights.[59] However, the language is updated. Where the 1789 Constitution allows military exceptions during "time of War or public danger," this language restricts it to crimes committed during wartime. "Public danger" is far too broad a cover. At any given time, an argument can probably be made for a plausible "public danger" from *something*. Because of the potential for abuse, that broad language doesn't appear in this Charter.

It also further restricts the military carve-out to include only active-duty military personnel. This doesn't mean reservists and guardsmen can't be subjected to this exception. If they are carrying out their military duties, they are legally considered active-duty military during that period. On the other hand, those same reservists and guardsmen are not considered to be active-duty simply because they belong to the Reserves or National Guard. If they are otherwise carrying on their normal civilian lives, without active orders, they are not active-duty.

Finally, not all crimes committed by active-duty military during time of war qualify for the exemption. Alleged criminal behavior that doesn't directly involve the service member's military duties is not exempt from the grand jury requirement. For example, suppose we are at war with Righteous Front, a multi-national terrorist organization. Corporal Jane Smith is not deployed and has been accused of running drugs when off duty. When she is indicted, she would still be entitled to grand jury protection, since her alleged crime has

[59] *Compare* **Constitution of 1789**, Amendment V: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger...."

nothing to do with her military service or the war against Righteous Front. During the same conflict, Airman Oliver Adams is deployed to Haiti and has been accused of using his logistics contacts to run drugs. In his case, the alleged crime is directly related to his military duties as a supply specialist, so the grand jury requirement could be waived.

It's important to note that the military exception *allows*, but does not require, an exception to the grand jury protection. The government might still elect to provide that protection, if they wanted to do so (though, as a veteran myself, I'll concede that would be very unlikely).

> Grand juries must be randomly assembled, and an independent counsel must be appointed to refute the prosecution's claims before the grand jury.

This core protection was important enough during the founding era that Anti-Federalists insisted on it as part of the Bill of Rights. But it isn't working as intended. It is supposed to be a check on government power and the potential for harassment. In reality, grand juries indict 99.99% of cases brought before them.[60] The situation is so out of hand that former Chief Judge Sol Wachtler of New York's Court of Appeals once noted that competent prosecutors can get a grand jury to "indict a ham sandwich." He wasn't wrong.

The main reason for this lack of restraint is that the grand jury is only presented with the evidence and arguments of the prosecutor. There is no adversarial system in place. No one objects to evidence as potentially inadmissible. No one requires cross-examination of the

[60] See **Bureau of Justice Statistics**, U.S. Department of Justice, Federal Justice Statistics 2010 – Statistical Tables, Table 2.3 at page 12 (2012); and *The single chart that shows that federal grand juries indict 99.99 percent of the time*, THE WASHINGTON POST, (Nov. 24, 2014), https://www.washingtonpost.com/news/wonk/2014/11/24/the-single-chart-that-shows-that-grand-juries-indict-99-99-percent-of-the-time/.

evidence. With those rules in place, anyone who was part of their high school debate team should be able to secure an indictment. That's why this Charter calls for independent counsel to refute the prosecution's claims. This is not a full trial, but it adds a layer of adversarialism that will help bar the gate against rampant abuse.

Although the language here is more specific than the Constitution of 1789 about how a grand jury is assembled, it isn't an innovation. It is simply codifying current practice.

> Nothing in this clause should be construed as requiring the possible defendant to be informed or present at this hearing, as it does not confer guilt; it only allows for indictment.

Currently, grand juries do not give the accused access to the proceedings. In fact, in some cases, the accused does not even know of a grand jury proceeding until an indictment is handed down. Transparency is key to the freedom and effectiveness of democratic forms of government. In this case, though, secrecy may be necessary to prevent the accused from fleeing or destroying evidence. This clause upholds that principle.

> The government must prove that probable cause exists for believing a crime has been committed and that the person to be indicted has committed it, either in whole or in part.

This is a simple, positive statement. It clearly states what the prosecution must do for a grand jury to return an indictment. There has to be enough evidence to show a reasonable chance that a crime was committed. Then, the prosecution has to show enough evidence to

conclude that there is a reasonable chance the accused committed that crime, either on their own or with others.

*Article I, Section 2.B.2($t_2$). Transparency and Permitted Redactions*

> When a grand jury returns an indictment, the transcript of the hearing must immediately become part of the public court transcript. The names of victims or witnesses may be redacted to protect their safety or prevent substantial harm to victims of violent or exploitative crime. Classified information and other information this Charter protects from disclosure may also be redacted. The deliberations of the grand jury are not a matter of record and will not be disclosed.

Grand jury proceedings straddle the line between the need for democratic transparency and the necessity of secrecy. This paragraph resolves that tension. It requires immediate disclosure of hearing transcripts with an indictment. Witness safety and victim protection are legitimate concerns, so there is a narrow exception to address them. In the same way, some cases may involve executive privilege or classified information, so redactions are allowed, as long as they are supported elsewhere in this Charter.

*Article I. Section 2.B.2($t_3$). Special Prosecutors for Color of Law Prosecutions*

> At any time that the accused is an employee, contractor, officer, or agent of the United States government, or of the States, or of their constituent parts, whose alleged crime was carried out under color of law, the court must appoint a special prosecutor to prosecute the case. This requirement shall also apply to any individual whose alleged crime involves the misuse of governmental authority or position.

When Breonna Taylor was killed in her sleep by officers executing a no-knock warrant (that is, a warrant that does not require police to knock before entering a residence). Her boyfriend, who was in the apartment at the time fired a single shot, believing the police were intruders. In the barrage of bullets that followed, she was fatally struck.

The grand jury did not return an indictment for homicide.

However, that isn't the whole story. After the proceedings, multiple grand jurors alleged that the Attorney General didn't present them with the option to indict the officers for homicide, that he refused to submit charges related to Taylor's death, and that the prosecution framed the shooting as fully justified, which left no pathway to indict.

If those allegations are true, as seems likely, it can't be reasonably argued that the prosecution was faithfully and aggressively presenting a case for homicide to the grand jury.

This is an example of a potential crime under the color of law. "Color of law" means using an official position, like as a police officer, in the commission of a crime. It's also a clear example of a clear conflict of interest on the part of the prosecution.

Because of circumstances like this one, the Charter has a pathway for bringing in a special prosecutor to handle indictment and prosecution.

Would that have changed anything in the case of Breonna Taylor? I don't know, and neither does anyone else. But what we do know is that grand jurors publicly commented on the fact

that they didn't have a *way* to bring an indictment because of the way the prosecution handled the Grand Jury proceedings. Make of that what you will.

> In such cases, the normal prosecutorial channels may not be relied upon. The appointed special prosecutor may not come from an agency or jurisdiction that has ongoing or investigatory relationships with the defendant or the defendant's agency.

In the Taylor case, the Attorney General's office had a clear conflict of interest. If he forced an indictment, the police union would almost certainly have attacked him politically. I'm not saying that excuses any actions taken or not taken. I'm saying that the existence of that political reality introduced a set of incentives that bent *away* from justice. It would have been cleaner and better for there to be a special prosecutor who was shielded from the local ramifications of prosecuting a group of local cops.

> The court must invoke this paragraph any time the defendant fits the description provided here. Additionally, the court must invoke this paragraph whenever the victim(s) or their legal representative(s) petition the court for the appointment of a special prosecutor upon a showing of credible evidence:
>
> 1. That the alleged offense was committed under color of law, and/or
> 2. That the normal prosecutorial process presents a reasonable risk of bias or conflict of interest.

But what if the prosecutors with jurisdiction simply refuse to attempt to bring an indictment? What's the remedy? The Charter gives the victims the opportunity to petition the court directly for the appointment of a special prosecutor. It isn't easy or automatic because they have to meet the elements. Still, the victim or their representatives should be able to meet those elements if the case is valid. If they do, the court's hands are tied; it has to appoint a special prosecutor.

Article I, Section 2.B.2(u). Right to a Speedy Trial.

> The accused and the public both have the Right to a speedy trial. If there are delays, they must help the accused unless the court finds that the accused acted in bad faith. A trial is considered speedy if it starts within twenty-four (24) months of arraignment. In complicated cases, more time may be given, but only if counsel explains to the judge, with clear proof, why it's needed. Discovery and pre-trial may not exceed three (3) years for any reason.

The United States has, in theory, always recognized the right to a speedy trial.[61] But we don't all agree on what that means. In fact, no fixed standard exists. There's a balancing standard established under *Barker v. Wingo* (1972),[62] but it has problems. While the Court correctly pointed out that it is not the court's role to create a rigid rule,[63] the idea that a

[61] **Constitution of 1789**, Amendment VI.
[62] *Barker v. Wingo*, **Volume 407, United States Reports,** opinion begins at page 514 (1972).
[63] *Ibid.* at page 523. "We do not establish procedural rules for the states, except when mandated by the Constitution. We find no constitutional basis for holding that the speedy trial right can be quantified into a specified number of days or months."

balancing test is less activist is absurd on its face. A balancing test remains a rule, even if it's flexible. What's more, the test proposed by the court is vague:

> How long was the delay?
>
> What was the reason for the delay?
>
> Did the defendant demand a speedy trial? How vigorously?
>
> How did the delay harm the defendant?

The only one of those four pillars that's an objective standard is the first one.

The reason-for-the-delay pillar, for example, assumes that there is somehow less harm in a delay granted for one reason than in another.

Did the defendant demand a speedy trial? Who cares? I said it in my commentary on self-incrimination: a right that has to be invoked isn't a right; it is a granted petition.

How vigorously did the victim demand it? How do you measure that?

The point here is this: there is no objectivity, no blind justice, to this test.

Also, remember that the right to a speedy trial is as vital to the public as to the defendant. Justice delayed is justice denied. The government, when it really wants to do so, can try even complex cases quickly. Timothy McVeigh's trial began two years and seven days after his arrest.

This clause establishes that this right applies to the general public, not only to the defendant. That said, the defendant's rights take precedence.[64] The clause also establishes a basic expectation that a trial begin within two years. Continuance is permitted up to the three-year mark, which it becomes the hard limit. Get the trial started in three years, period.

"But the defense could run out the clock and get a mistrial." No, they can't. The very first sentence said, "The accused and the public both have the Right to a speedy trial." The accused can't abridge the rights of the people.

The prosecution can't delay the trial indefinitely when they lack a strong case. Strategic delays to deprive access to witnesses, or other deliberate means to game the system, are prohibited.

Article I, Section 2.B.2(v). Right to the Final Verdict of a Jury.

> Every Person has the Right to an impartial jury and to a verdict that courts may not override on factual grounds. Juries are the sole judges of fact in both civil and criminal trials. Judicial review on appeal can only consider the application of law and procedure, not the jury's findings. Judgments as a Matter of Law or Judgments Notwithstanding the Verdict are invalid, as they overturn the principle of fact-finding by jury.

[64] The idea that a defendant, especially a criminal defendant enjoys all the advantages in the adversarial court system is foundational. It's the basis for evidentiary rules and standards of evidence to convict, among other things.

The right to trial by an impartial jury is a right we teach grade-school children. The idea that only other people like us have the context to stand in judgment over us is a core principle of the American legal system. It isn't a suggestion. It's a mandate that the Founders wrote into the Constitution of 1789 with good reason.

Yet, the fact is that American courts permit judges to override civil jury verdicts through the doctrines of Judgment as a Matter of Law (JMOL) and Judgment Notwithstanding the Verdict (JNOV), which I will show to be morally and legally bankrupt. Even though they are civil, not criminal, they still betray the jury's *ancient* right to decide the facts. And what prevents their use from creeping into criminal law, now that they're established?

I used the term "ancient" very intentionally. The right to a jury has roots in the Magna Carta,[65] which were expanded into the concept of the "rights of Englishmen." By the colonial period,[66] this right was ancient in origin, even to the framers of the Constitution of 1789. It was already more than five and a half centuries old when they drafted their foundational law.

The historical fact that King George III denied them those rights[67] is reflected in the specific grievance from the Declaration of Independence, "For depriving us in many cases, of the

[65] *See* **Magna Carta**, Clause 39 (England 1215). "No free man is to be arrested, or imprisoned, or disseised, or outlawed, or exiled, or in any other way ruined, nor will we go against him or send against him, except by the lawful judgment of his peers or by the law of the land." Although this established a legal and constitutional right to something like a jury, it only applied to a very narrow class at the time of its adoption. A "free man" didn't mean any serf or villein, which were the majority of England's population at the time.
[66] **Ancient Law, or A Collection of the Ancient Laws of the English** (Latin title: *Archaionomia, siue De priscis Anglorum legibus libri*) William Lambarde, translator, (London, Ex officina Ioannis Daij, 1568); **The Second Part of the Institutes of the Laws of England** (England 1797); **The Petition of Right,** Chapter 1 (English statute 1628).
[67] **The Sugar Act of 1764**, Chapter 15 (English statute 1764); **The Stamp Act of 1765**, Chapter 12 (English statute 1765); as well as the broad abuse of the Vice-Admiralty Courts in the Americas during that period.

benefits of Trial by Jury…"[68] This abuse was severe enough that protection of the right to trial by jury is enshrined in the Bill of Rights.[69]

The purpose of enshrining this right was to respond to judgments rendered against individuals by "expert" judges. Juries were and are supposed to be the voice of the People, which stands between judicial authority and the accused. During the colonial period, the Crown appointed judges who consistently ruled in its favor. This was naked tyranny.

That historical context raises the question: why are judges in the United States permitted to override jury verdicts?

Current legal theory holds that fact-finding is the exclusive domain of the jury. This aligns with the language of this Charter and with a plain reading of the Sixth Amendment.[70]

But the current theory also says that judges decide whether the evidence is enough to rule for or against the plaintiff. Judges overturn civil verdicts based on this legal theory, invoking Judgment as a Matter of Law (JMOL). That legal theory is based on rules, not the 1789 Constitution. It's based on Rule 50.[71]

Giving all the respect that it deserves, that argument that judges decide if the evidence is sufficient is pure horseshit. If the evidence were sufficient, then the jury would have found

[68] **Declaration of Independence,** drafted by Thomas Jefferson and adopted by the Second Continental Congress. (United States of America, July 4, 1776). This is the 20th enumerated grievance.
[69] **Constitution of 1789,** Amendment VI.
[70] **Ibid.,** "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed."
[71] **Federal Rule of Civil Procedure 50, Judgement as a Matter of Law,** Rule 50(a) "pre-verdict Judgment as a Matter of Law" and Rule 50(b) "renewed motion for Judgement as a Matter of Law—formerly JNOV."

it so. Evidence proves or refutes a fact. “But the evidence was too strong…” Did the plaintiff’s counsel present the evidence properly? No? That’s not a problem with the jury.

If the jury found or rejected a fact, then, by definition, they accepted or rejected what the evidence showed them. The mere fact that a judge thinks they are foolish, or racist, or lazy is irrelevant. The judge oversaw jury selection. If they can’t be trusted to oversee a process that “gets it right,” then why should we trust them to overturn a jury’s verdict? That just plain doesn’t make sense.

Why does the judge get to second-guess what the jury found that the evidence did or didn’t prove? And if the judge can do so, why disrupt the lives of ordinary citizens in a mock show that they are the arbiters of fact? It would be better to acknowledge that the judge is the sole arbiter in the courtroom and that a jury’s verdict counts only if the judge deems it to do so.

Another justification for overturning a jury verdict is that, in 1791, when the Bill of Rights was ratified, English common law recognized “demurrer to evidence” and “arrest of judgment.” These were post-verdict judicial reviews.

The obvious problem, as I have outlined above, is that the founding era's insistence on the right to trial by jury originated in the abuse and denial of that right under English common law during the colonial period. Nullifying a jury verdict is, in practice if not in fact, a denial of the right to trial by a jury.

It is farcical, at best, to say, “Demurrers were used before the right to a trial by jury was enshrined, which was a right the framers found so important they almost didn’t ratify the Constitution because it was absent. Since that was the case then, it must be okay now.” That’s literally the argument this rests on!

Even worse, the arguments under Rule 50 are that this Judgment Notwithstanding Verdict (JNOV) is allowed when “reasonable men could not differ” on the evidence. The jury *does* differ. Is the argument that they weren't reasonable? The emptiness of that argument is the same as it was under JMOL.

The right in this Charter is clear. Juries are the final and sole judges of fact. No judge may overturn those findings. Appeals and reviews may be made only on the basis of law or procedure.

Article I, Section 2.B.2(w). Protection from Double Jeopardy.

> No person may be prosecuted more than once for the same conduct.

This statement protects anyone from facing multiple trials for the same behavior. It’s classic double jeopardy protection. But there is a twist. The wording is “for the same conduct,” rather than “for the same crime.” This is intentional. Currently, prosecutors charge individuals with a specific crime. If they lose at trial, they then charge a different crime and retry the case.

So what does “same conduct” mean? It is the collection of circumstances, time, place, and behaviors that constitute the alleged criminal activity. What the definition doesn’t include

is a description of conduct in one set of legal terms or another. The example below not only explains why this right is essential, but what "same conduct" looks like.

Imagine a scenario where a hired security guard at a car dealership is beaten, and a car is stolen. The perpetrator's face isn't visible in the security footage, but they are seen making a call on a cell phone before entering the stolen vehicle.

In an entirely unrelated matter, your cell phone disappeared earlier that day. You're not sure, but you *think* you left it on the table at the restaurant at lunchtime. You intended to return and look for it, but you got busy and decided you'd return tomorrow.

The next day, you're arrested, because records show a call made from your phone at the dealership at the time of the criminal activity.

You are tried on the charges of battery and grand theft auto, but the jury acquits you. The prosecutor, though, wants to show they are tough on crime, so they charge you with criminal trespass. How do you think you'd feel about that?

All too often, people gripe about our system being soft on criminals, but the above scenario is definitely the kind of thing that can and does happen in our system. "Good!" some cry. Until they're the ones who are in the legal crosshairs.

Our system is based on the idea that "it is better that guilty persons escape than that one innocent suffer."[72]

> A case must begin in the lowest level of government that has a law against the conduct, in the place where it happened. If that level chooses not to prosecute, the next level of government may do so, but only if the conduct is illegal at that level. This process may continue upward, but once any court has held a trial, no other level of government may prosecute the same conduct, even under a different law.

Sometimes, behavior could violate the law in more than one jurisdiction. Two things happen in those cases.

First, sometimes a higher jurisdiction will intervene and supersede the case from the more local one.

Second, and more relevant to double jeopardy, a case will fail at the trial level. Then, a higher jurisdiction will step in and retry the case.

The Charter's upward escalation scheme prevents both abuses. The lowest court with jurisdiction gets to take a crack at the case. If they do, and they lose, that's it. If they choose not to pursue a case, the next higher jurisdiction may intervene. But they can *do so only if* there is a law prohibiting *the behavior at that level.*

[72] **Commentaries on the Laws of England,** William Blackstone (Oxford: Clarendon Press, 1765-1769), Book IV, Chapter 27. Although this is a pre-revolutionary work about English law, the Founders admired Blackstone deeply. Benjamin Franklin (among others) relied on it, though he expanded it to a hundred guilty.

If a trial ends without a verdict—such as due to a mistrial—it may be retried. But if a verdict is reached, the case is final. A judge may not order a new trial. Prosecutors must bring all charges they intend to pursue before the trial begins. If they choose not to include certain charges, or if the accused is acquitted, they may not prosecute the same behavior with different charges.

Regardless of jurisdiction, once a case is tried, it's done, except for cases where no verdict is reached.

In our example, you were tried and acquitted. It wasn't a mistrial; the jury reached a binding verdict. The government would not have the authority to try you for criminal trespass at a later date. It's a different charge, sure, but it's one based on the same behavior.

The only permissible retrial is in cases where no verdict was rendered. Full stop. The practice under Rule 50 of ordering retrial as a Judgment Notwithstanding Verdict based on the weight of the evidence is prohibited here.

There is an allowance for multiple charges or "lesser included" charges, but only if they are all brought to trial at the same time. If the prosecution declines to include certain charges but loses the case, they can't go back and try other crimes or lesser offenses later. The principle is clear: the government gets one bite of the prosecutorial apple, period.

If the same conduct may violate both civil and criminal law, both types of cases may proceed. However, civil courts may not award punitive damages in such cases. Punishment is reserved for the criminal process.

Civil courts are about making a victim whole, while criminal trials are about punishment. There will be an overlap between civil and criminal trials for many cases. This language explicitly permits both trials to proceed but makes clear that punitive damages, which might be allowed in other civil trials, are prohibited in these cases. The reason is simple: punishment is the province of the criminal courts.

Article I, Section 2.B.2(x). Protection from Excessive Bail and Cruel or Unusual Punishments

> Excessive bail or fines are forbidden. Punishments may not be cruel or unusual when measured against norms across the United States and other advanced nations. The penalty for abuse of Civic Standing in Article IV, Section 4 of this Charter is not considered a violation of this Right.

The first sentence of this Right is clear and borrows heavily from the Eighth Amendment to the Constitution of 1789.[73]

The following sentence is a little different. "Cruel and Unusual" punishment is a vague standard, unless you know what *isn't* unusual. In the case of a single State, the courts can easily compare their practices with those of other States. But at the federal level, if the Supreme Court strikes down a federal punishment as 'unusual,' what are they comparing it to? Other federal punishments? That creates a circular standard in which federal practices

[73] **Constitution of 1789,** Amendment VIII.

determine their own constitutionality. The only reasonable standard to use is to compare with practices outside the United States.

Some nations routinely allow torture, rape, starvation, and other punishments for crimes. Certainly and obviously, those are precisely the kinds of abuses this right is intended to curtail. That being the case, a broad view of *all* other nations isn't reasonable. It is sensible to compare our practices with those of other countries we consider our international peers. This provision codifies the legitimacy of that practice.

A pointed critic might say that this cedes American sovereignty in these cases. That criticism would be incorrect. This language permits comparison but imposes no obligation on the courts to decide in favor of or against any form of punishment. It only permits considering other nations' practices as a basis for determining whether a punishment is cruel or unusual.

Finally, under Article IV, Section 4.B.2, a significant penalty is prescribed for the abuse of Civic Standing. While codification in the constitutional text should be sufficient to protect that provision, a specific carveout is included in the language to underscore the point.

Article I, Section 2.B.2(y). Wrongful-Conviction Review.

> When new evidence might have changed a verdict resulting in a conviction, any official, defined as an agent or employee of the state in any capacity, possessing it must notify the court. The court must review; if confidence in the verdict is undermined, the Person shall be released, the conviction vacated, and the record expunged.

Widely available estimates based on research suggest that anywhere between 1% and 10% of the prison population is wrongly convicted. Even taking the most conservative of these estimates (1%), with roughly 2.3 million people incarcerated, that translates to 23,000 people imprisoned for crimes they did not commit. No nation that prides itself on freedom and the rule of law can consider that an acceptable state of affairs.

The case of Gary Dotson is an example of how, not only do we wrongfully convict people at a horrendous rate, but when evidence changes, we drag our feet about releasing them. He was convicted of rape based on the alleged victim's testimony and flawed forensic evidence. Six years later, his accuser recanted her testimony, but courts refused to overturn the conviction. It was only after DNA testing definitively *proved* his innocence that he was legally exonerated. I'll point out that the fact that the alleged victim recanted her testimony was enough to introduce reasonable doubt. That's supposed to be the bar for conviction, but it wasn't enough to exonerate him; it required positive proof that someone else committed the crime. That stands presumption of innocence on its head. "But he was already convicted!" Yes, but the question in front of everyone is *whether that conviction was valid* and whether the evidence established guilt beyond a reasonable doubt.

Another man, Maurice Hastings, was convicted of abduction, sexual assault, and murder. His conviction was based largely on circumstantial evidence. Twelve years into his sentence, he requested DNA testing, but was denied by the Los Angeles County District Attorney's Office. *Twenty-one years* after his initial request for DNA testing, he submitted a claim of innocence to the DA's Conviction Integrity Unit. The subsequent retesting not only proved Hastings' innocence, but it also definitively identified another man, Kenneth

Packnett, as the perpetrator. It took a total of *38 years* for Hastings to win his freedom, despite being convicted only after a retrial (the first trial had ended in a hung jury) based on circumstantial evidence.

This right cannot reverse that trend on its own. However, it does provide a mechanism that mandates any government official who uncovers evidence that might have changed a verdict must bring that evidence to the court. It isn't optional. Similarly, the court must review that evidence. It isn't optional. If confidence in the verdict is undermined, that means reasonable doubt exists and the verdict is invalid, since that was the standard for conviction in the first place. That's a simple logic. The right then mandates that the convicted person must be released. Their conviction must be vacated. And the record of the conviction must be expunged. It isn't optional.

Critics may argue that this provision could overwhelm the courts. I'll address the moral aspect first, then the logistics. Morally, it simply does not matter whether it overwhelms the courts. First, convictions can result in the death penalty. In fact, in Hastings' case, at his first trial, the prosecution was requesting the death penalty. An innocent man could have been executed. Second, concerning the foundational philosophy of this Charter, *the state has no interests; only the People do.* Government exists to secure the rights of the People. There can be no right more fundamental than to be free from incarceration and/or execution for a wrongful conviction. As far as the logistics go, "overwhelming the courts" seems unlikely. If it does, then create more judges. This argument, at its core, boils down to, "It's too hard to do the right thing, so those people will just have to stay in jail." That isn't who we are.

Article I, Section 2.B.2(z). Freedom of Belief.

> Every Person has the Right to believe what they choose. They cannot be forced to act against those beliefs. They may act on those beliefs except where no pathway exists to act without infringing the Rights of another Person. Similarly, they are not required to act when doing so violates their beliefs, unless the inaction directly infringes the Rights of another Person. Every Person has the Right to change their beliefs.

Every single person has beliefs. Everyone. In Intro to Philosophy in 1987, I was taught that a belief is defined as a thought that the holder holds strongly enough to act upon. That is, belief is not just "circles are a geometric shape where every point along the perimeter is the same distance from the center as every other point," but living and acting to make sure that when you draw or refer to circles, that's the definition you use.

But in civic life, beliefs also belong to the marketplace of ideas. The marketplace of ideas is a vital concept. In any democracy, whether it's ancient Athens or a modern republic like ours, that marketplace has to be healthy and free. For that marketplace to thrive, people have to be free to hold whatever beliefs they need to keep. And they must be able to act on those beliefs.

But can a marketplace of ideas without any limits at all function? Not for long, no. Suppose people are free to act on all of their beliefs. What stops the person who legitimately believes all people of a specific class must die, what besides their financial and physical limitations prevents them from attempting to kill them? Or in the case of a person who

sincerely believes that contraception is wrong, but they are a pharmacist, so they refuse to refill birth control prescriptions?

A reasonable person has to concede that there have to be limits, but what limits? How do we prevent those limits from being a type of tyranny of their own?

When *action* on a belief infringes the rights of others, it must be restricted. But, even then, the restriction can't be wholesale. Could the person act within their beliefs in some other way that would avoid infringing on another's rights? If so, then only the specific behavior in question can be restrained.

The bigot in my first example can hold or speak on their belief that certain people should die, but they can't simply take action on that belief. They also can't incite anyone *else* to carry out those beliefs. That example is obvious.

The trickier of my two examples is the pharmacist. In an urban setting, there may be no problem; find another pharmacist, possibly even at the same pharmacy. But what about rural Wyoming, where the next closest pharmacy is hours away? In that case, it might be unreasonable for that pharmacist to withhold the medication. Beliefs, or even their expression, are acceptable. Acting on beliefs is acceptable. But when actions infringe the rights of others, those actions must be restricted.

Another key element in the marketplace of ideas is persuasion and persuadability. That is, a person has the agency to conclude their prior beliefs were wrong and to adopt new ones in their place. They're also free to stop believing *anything* on a given subject. If that freedom

isn't maintained, deliberative democracy is impossible. After all, what is debate if not the attempt to persuade another to revise their beliefs?

But why insist on a freedom to change your mind? That seems odd. By enshrining that right, the Charter precludes a bad-faith argument that someone who once professed a belief necessarily must still hold that belief. That could matter a lot in a court of law.

Article I, Section 2.B.2(aa). Religious Freedom.

> The Government shall not establish any religion, nor prohibit the free exercise of any religion that does not infringe the Rights of others. Nor may it require that an individual exercise a religion. Public officials or government employees may express personal faith, provided it does not reasonably imply official endorsement by the Government.

The very first words of the Bill of Rights are, "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof."[74] For over two centuries since that became law, there has been endless parsing, debating, and proclamation about what that clause means. Individual rights have been upheld – and denied – on both sides of the debate, depending on who was before the Court.

[74] **Constitution of 1789,** Amendment I.

The history of Europe is replete with wars between Protestants and Catholics. The Middle East had the Crusades and still struggles with sectarian religious conflict between Sunni and Shi'a. South Asia has battles between Muslims, Hindus, and Sikhs.

As Americans, we face our own pressures related to religious conflict. If we want to preserve our peace, it's past time for us to clean up this vague language.

The first sentence of this sub-clause is pretty straightforward. The government can't establish a religion. Pastafarianism, Baptist Christianity, Judaism, Wicca… All of these (and more) are equally restricted from government endorsement. The government also can't ban anyone from *exercising* their religion.

This is a subset of the idea of Freedom of Belief.[75] And the same rule applies. As long as the exercise of religion doesn't infringe on someone else's rights, it must be respected. If you accepted my arguments on Freedom of Belief, this should be easy to swallow, too.

The real point of contention surrounds individuals in government who exercise their religious beliefs. Some argue that the right to free exercise means that a government employee or official can't be restricted from engaging in religious exercise under any circumstances. That doesn't make sense; surely there could be an exercise that establishes, or at least endorses, their religion. Others say that no government employee or official may publicly exercise their faith under any circumstances. While that prevents the infringement

[75] **National Charter of the United States** (unratified), Article I, Section 2.B.2(z). Freedom of Belief.

of anyone else's rights, you can't argue that it represents the least restrictive means of ensuring that goal. Both extremes are wrong.

The next sentence in the Charter imposes the test. The test is simple in concept, but tricky in application. If an official's exercise of personal faith could cause a reasonable person to conclude that the official is trying to make or imply an endorsement of religion in general or their faith in particular, that's not allowable. On the other hand, merely publicly exercising or expressing their faith while carrying out their duties doesn't necessarily meet that bar. As long as their actions don't appear to promote or endorse religion (or its absence), then those actions are fine. As with all rights, the balance is to preserve all rights. Only when that isn't possible are restrictions allowable, and then only by the least restrictive means.

Put another way, the test, taken directly from the Charter's text, is "does not reasonably imply official endorsement." What does "reasonably imply" mean? It means an act that an objective person familiar with the facts and circumstances, with or without understanding this provision of the Charter, would logically conclude implies an official endorsement.

That is a lot of theorizing on a messy principle. Let's look at some examples. Religious exercise in the classroom is a favorite subject of both sides of the debate, so let's use that. If a teacher marched into class and told their students that the only way to pass was to declare the Flying Spaghetti Monster as their Lord and Savior, that would be an attempt to establish Pastafarianism as a required religion. It would be blatantly in violation of this subclause. On the other hand, if that same teacher, without making any reference at all to

their religion other than to wear a charm that depicts the FSM, no reasonable person could realistically say the teacher is imposing Pastafarianism on their class. It would be an allowable exercise of religion, even in the classroom.

Those are the boundaries. Now let's look at the middle ground. What if the teacher started each day by taking a minute to sit at their desk and pray to the FSM? Their prayer isn't loud, maybe not even audible, but it is obviously a prayer. That alone still doesn't imply an establishment of religion. The teacher is simply praying (anyone who thinks prayer ever left the schoolhouse hasn't been around on testing day). What if one or two students, independently, joined the teacher? Still not an establishment of religion. On the other hand, if the teacher is very showy about their prayer, or even invites students to join, that crosses into the appearance of establishment.

Now, the question comes up (a lot) about whether students, on their own and without direction from any official in the school, can exercise their religion. Say a kid wears a shirt boldly declaring, "The Flying Spaghetti Monster is the Only God." The kid may just be doing what kids do: being provocative. It doesn't matter. On its face, this is protected exercise. The kid isn't a member of the government. The language of the Charter doesn't say you can't exercise religion in public spaces or even in government spaces. It says the government can't establish religion. The kid is just a kid. They aren't part of the government (and no, Student Council doesn't count).

It's vital that individuals are free to exercise their religion. It's equally essential that the government not impose religion. This sub-clause strikes that balance.

Article I, Section 2.B.2(ab). Freedom of Speech and Expression.

> Everyone has the Right to speak freely, including through art, religion, and politics. The government may not punish or censor expression, except in the narrow instances listed here.

The freedom to speak your mind without punishment from the government may be the most quintessentially American right there is. Or at least we think of it as such. The truth is, we ban books, and we insist that people whose opinions offend us can't be allowed to speak at public venues.

So, what most of us really mean is that the freedom of speech we *agree* with is a fundamental right.

But Freedom of Speech and Expression is another subset of Freedom of Belief. If it doesn't infringe on another person, it must be allowed. If it isn't permitted, deliberation can't happen.

But what about unspoken expression? Art informs our opinions in ways the spoken word can't. Books reach people who never hear speeches. Poems rock our hearts in ways other forms of expression can't. A Native American woman with a red hand painted over her mouth has a distinct social and political meaning.[76] So, it isn't just the spoken word that's vital. It's all expression.

[76] The red hand painted across the mouth is a symbol of the Missing and Murdered Indigenous Women movement. It represents the silencing of these women through violence and murder.

Still, some things need restriction. They harm others' rights in one way or another. Here are the categories of expression that are *not* protected.

*Article I, Section 2.B.2(ab$_1$). Unprotected Categories*

1. Speech intended and likely to incite imminent lawless action or panic;
2. Deliberate falsehoods causing demonstrable harm, including reckless disregard for truth in contexts where accuracy is legally required, including political speech during the one hundred eighty (180) day period before an election;
3. Lying under oath;
4. Deliberate misinformation about voting procedures, candidate eligibility, or official endorsements intended to mislead voters;
5. Commercial fraud, as defined by law;
6. True threats, including statements meant to instill fear of violence or unlawful harm;
7. Harassment, which is defined as targeting a Person or group in a sustained manner intended to intimidate, silence, or cause emotional harm;
8. Expression of any kind by Associations is unprotected, since Associations have no Civil Rights.

Incitement is obviously a reasonable line in the sand. That's not a new standard; it has been consistently upheld in free speech doctrine throughout our Republic.

The second item may raise an eyebrow: why is false political speech unprotected? First, it isn't always. It's only unprotected during campaign season.[77] But why? Misinformation, disinformation, and mischaracterization in campaigning are nothing new, but they have always been corrosive. In today's political landscape, we can no longer even agree on what the *facts* are in debates. But facts remain verifiable. The voters require accurate information on which to base their decisions. Introducing or allowing deliberate lying during a political campaign damages the Republic itself.

It should be utterly uncontroversial that lying under oath isn't protected speech. Our legal system relies on truth-telling under oath. We even have a crime called perjury. In fact, we impeached a president for lying under oath.

Lying about voting procedures, endorsements, and whether a candidate is eligible to run for office, with the intent to mislead voters, even outside campaign season, is unprotected. Why should you have the right to undermine our system of government?

Fraud is and always has been illegal.

Threatening someone, that is, saying or doing something designed to create the fear of violence in another person, is not protected speech. It can't be. It infringes the target's rights, and does so with the threat of injury or death.

[77] *See* **National Charter of the United States** (unratified), Article VI, Section 1.A.9. Campaign Season.

Harassment isn't protected speech. Calling you an offensive slur in traffic isn't harassment. Calling you that same slur every day is. Spamming your comments across all of your online posts may be, if the intent is to silence you.

And finally, the one I expect the loudest howl against. Associations don't get the right to free speech. That door is already closed in the section on Associations.[78] It's so central that it is repeated here. Associations aren't persons, so they have no constitutional rights.

*Article I, Section 2.B.2(ab$_2$). Obscenity*

> Offensive or obscene speech is protected. The sole exception is graphic sexual or violent content reasonably likely to be seen or heard by minors without parental consent. Reasonable limits to protect children are allowed, as long as they don't unduly burden adults.

Obscenity is a frequent target of censors. That's problematic for two reasons.

First (and by far the larger issue), what is "obscene" is in the eye of the beholder. There is no objective standard for it. Obscenity is used as a shield for allowing censorship. Ironically, it's merely a fig leaf covering the nakedness of their real argument.

Second, you can object to content, you can question how it is made, you can consider it immoral, but none of those objections make the content rights-infringing in and of

[78] *See* **National Charter of the United States** (unratified), Article I, Section 2.B.1(b). Associations.

themselves. Expression, like any right, can only be curtailed when the rights of others are infringed, and then only by the least restrictive means.

Still, there is substantial evidence[79] that certain content can be harmful to developing children, which is an affront to their Right to Bodily Autonomy, so a very narrow exception is allowed, restricting their access to graphic sexual or violent content.

A sharp critic might say, "Well, what about Adults? Doesn't the same content harm them?" To that, I have a two-pronged answer. First, the existing research is weaker. But more fundamentally, adults are better equipped to *choose* whether to consume that type of media.

*Article I, Section 2.B.2($ab_3$). Private Autonomy*

> Private individuals and groups cannot be compelled to host or support speech with which they disagree. In that spirit, but respecting the influence algorithms have on the rights of other individuals, algorithms used to distribute or prioritize publicly available information on private platforms may remain proprietary, but the general principles, inputs, and effects of their design must be made transparent to the public.

Finally, we must protect both those who own and those who consume media platforms. It's definitely a violation of free expression rights to force anyone to host speech they disagree

[79] For more on this subject, see research published by the American Psychological Association, Pediatrics, Journal of School Health, and Developmental Psychology.

with. This paragraph preserves their autonomy, even if they host the speech of other individuals.

At the same time, people who use algorithm-based platforms should reasonably be able to understand how their speech gets distributed and who will see it. It isn't necessary to know the code or specific mathematical formulas. Still, the general means the algorithms use to promote or restrict posts should be readily available to users. TikTok and Facebook are current examples of this not happening, to the great frustration of their users. That frustration is so great that users on all sides of the social and political spectrum hurl accusations of censorship.

This isn't to micromanage what the owners of these platforms can and can't do. They can make editorial choices, even if they do so via an algorithm. The only principle at play here is transparency. Users should know how and why things happen.

Article I, Section 2.B.2(ac). Right of Access to the Digital Sphere

> The Government shall not restrict any Person's access to the digital sphere for any reason, except as punishment for a crime following conviction or during pre-trial detention.

Access to modern media – wireless phones, the Internet, intranets, Wi-Fi, local area networks, etc.- is not an optional luxury in the modern world. Many jobs, especially entry-level jobs, can only be applied for online. Banking is electronic. Payment systems are electronic. Businesses are converting to cashless systems. Email and text messaging are

central to communication. Teleconferencing is commonplace. Remote work, though it surges and ebbs, is a growing reality in the job market, meaning access is an increasing necessity. In some places, you can't even pay for parking without a cell phone app. You can't get by without access to the digital sphere. That's why, in a free society, access can't be stripped from the people.

It goes beyond access to modern society, too. We have seen authoritarian regimes do precisely that when civil unrest creates a real or perceived threat to them. Bashar al-Assad "pulled the plug" in Syria several times in the uprising between 2011 and 2013. Hosni Mubarak did it in 2011. Iran has done it multiple times. Russia has done it, and is now developing Runet, an independent network that can be severed from the rest of the world at will. China. Myanmar. Ethiopia. Turkey. Sudan. The list goes on.

These (and other) authoritarian regimes shut off digital access because they fear their citizens. Those citizens can (and do) use the digital sphere to resist them.

A free society can't tolerate a government with that kind of power.

During pre-trial detention, the justification for a restriction must be grounded in the rights of other detainees and the prison or detention center staff. It may not be punitive or have the purpose of cowing or otherwise intimidating the detainee, who has not been proven guilty. That justification must be presented to the presiding judge at the initial hearing. The judge must review the requested restrictions individually and approve or deny them. The period between apprehension and arraignment is

permissive in favor of the government. The exception to that permissiveness is that the detainee must be given whatever access is necessary to secure counsel.

For the most part, procedural specifics are a matter for statutes, not foundational law. This Charter respects that principle, but lays out guidelines that bind whatever statutes Congress enacts.

Based on the habeas corpus provision of this Charter,[80] there must be a hearing within 72 hours of detention. However, during that brief initial detention, the government must still act to secure the rights not only of the detainee but also of other detainees and its own staff. The government can take broad action to restrain access to the digital sphere during this time. They can't do so to break the mind, will, or spirit of the detainee. They also can't deny any access that is necessary for the detainee to retain counsel. This goes further than the "one phone call" rule popularized by TV shows. If the detained person needs access to the Internet to find a lawyer, the state must grant that access. Have you ever thought about who you would call with *your* one phone call? I'll be honest; I don't have a criminal defense lawyer's number memorized. Do you? A detainee without access is a defendant without a defense.

At the initial habeas corpus hearing, the government must show the restrictions on digital access it is seeking. It also has to justify why those restrictions are needed. The Charter imposes a duty on the judge to review those requests and approve or deny them. It isn't

[80] **National Charter of the United States** (unratified), Article I, Section 2.B.2(h). Habeas Corpus.

intended as a "rubber stamp" exercise. Like every other interaction within the Judicial system under this charter, rights are paramount.

> The digital sphere shall consist of, but is not limited to, access to the Internet, cellular telephone networks, satellite telephone networks, and comparable future technologies.
>
> This right does not exempt anyone from their responsibilities for the proper handling of classified information.

Finally, it's always important to agree on terms, so that we don't find ourselves bogged down in semantic end-runs around the intent of the text. These final two sentences define the digital sphere and affirm that other statutory law regarding the handling of classified material is not somehow rendered moot by this right.

Article I, Section 2.B.2(ad). Freedom of the Media

> The People have a Right to a free and independent media. The role of the media is to seek and report the facts and opinion. Presenting a "both sides" balance is not required.

A democratic system relies on a free and independent media. The framers didn't rely on "objective journalism." They wanted partisan, opinionated, and political argumentation in the press, not balance. Hell, they *litigated ratification* in the press—The Federalist wasn't a book. It was a series of what we would call "Op-eds" today. That's why they wanted press

freedom. They wanted to have publications that were free to say, "The President is a fink!" without political or legal repercussions.[81]

Today, Americans have adopted a standard of "fair" journalism that differs from the way it is understood in the rest of the world, including in democratic nations. For that matter, it isn't the norm in the United States. We *assume* that our sources are balanced while the "other" sources are biased, but in almost all cases, neither assumption is wholly valid.

Furthermore, it has been widely noted on social media (attributed to Texas journalist Hubert Mewhinney) that it is not the media's job to report the weather service as saying it is raining, then dutifully present the opinion of someone who says it isn't. It is their job to open the window and tell us which one is true. The language here upholds these principles.

> Except as narrowly outlined in Article I, Section 2.B.2(ab), the government can't censor media content. It may only compel reporters or media outlets to disclose their sources when there is an imminent threat to life, and no other reasonable means exist to identify that source.

This language expands on the philosophy of the first two sentences. It reaffirms the limits on unprotected speech, even in the media.[82] They are generally the same as for the speech

[81] That didn't last long with all of them. The Sedition Act of 1798 was passed less than a decade later, and it was used to punish those who criticized the Adams Administration.

[82] *See* **National Charter of the United States** (unratified), Article I, Section 2.B.2(ab$_1$). Unprotected Categories and Article I, Section 2.B.2(ab3). Private Autonomy

of any individual. There is a single caveat regarding the protection of sources, but it is tighter than current practice.[83]

> This Right protects both professional journalists and independent media creators engaged in gathering and disseminating information to the public.

With the slow collapse of legacy media sources, independent media has filled the void. Whether in the form of podcasts, quick-fire TikTok reporting, or various other avenues, these are aptly called "New Media." These New Media journalists don't enjoy the same protection as the more "recognized" media. The language here is intended to explicitly state, once and for all, what counts as "media" under this Charter.

Article I, Section 2.B.2(ae). Freedom of Association

> Every Person has the Right to freely associate with others. No Person may face legal or civil penalties solely because of their associations.

When the average American reads a passage like this, their reaction may be, "Well, of course not. Who would do that?"

The fact is, there are plenty of examples from the last century. We've already discussed Japanese internment at length earlier in this commentary. What was that if not rounding

[83] For a relevant example, I refer the reader to the case of Judith Miller, who was imprisoned for 85 days after refusing to divulge a source for a story she didn't even publish. The case involved the leaking of a CIA operative's name (Valerie Plame), in apparent retaliation for criticisms by her husband, Joseph Wilson, regarding the George W. Bush Administration's claims on Weapons of Mass Destruction in Iraq.

people up simply because of their ethnicity? They were rounded up and confined because they had an association with the nation with which we were at war.

During the McCarthy Era, creatives, professors, government workers, and union members were blacklisted for membership or even mere attendance at the meetings of communist or left-wing organizations, sometimes twenty years earlier. McCarthy's witch hunts found remarkably few spies and subversives, but they ruined many careers.

Since 9/11, some, including the government at times, have viewed Muslims with suspicion because they attend certain mosques (or for being Muslim in the first place). In the 1980s and 1990s, some Irish Americans were viewed with suspicion due to perceived sympathy for Sinn Féin.

We, the American people, have crossed the moral Rubicon before in that we have assigned guilt by association. There's every reason to believe we'd do it again. The Constitution of 1789 implied that it was wrong, but never directly addressed it. This Charter explicitly and emphatically bans guilt by association.

There are bad actors in the world. But assigning guilt to someone, or implying that guilt, simply because of their associations, is not only sloppy, it is wrong. It denies the presumption of innocence. But our government (and in some cases, the American people generally) treated entire groups as suspect because of the actions of a few. These individuals are overwhelmingly innocent of wrongdoing. They were innocent in the internment camps. They were innocent in the McCarthy Era. They were innocent in the

Troubles. They were and are innocent in the mosques. And they will be innocent in the future. There is no place for assigning guilt to any person based only on their associations.

Article I, Section 2.B.2(af). Freedom of Assembly

> Every Person has the Right to assemble peacefully in public spaces. No permit or license shall be required to exercise this Right, and the Government may not prohibit peaceful assembly in any location where the public is otherwise permitted to be.

Freedom of Assembly is a fundamental American right.

So why does this right get restricted so frequently?

Local governments create permitting requirements and mandatory notice periods. Authorities intervene, declaring that sidewalks can't be blocked. These are pretexts designed to hide the truth: that the government wants a say in who can and can't assemble, and over when and where they can do it.

> Safety and health regulations may apply, but must be narrowly defined and not used to suppress expression.

The mere presence of a large body of people doesn't constitute a threat to public health. If it did, the Astros couldn't play live games in front of fans. Everyone knows it. When the state asserts otherwise, the Charter precludes that claim.

Public safety may only justify restricting assembly where there is a demonstrable risk of imminent violence, not merely because others may be offended, disagree, or respond with hostility.

What counts as imminent violence? Authorities can't simply roll in and order a crowd to disperse. That's a blatant violation of this right.

It's also not okay to say, "Well, *other* people are getting mad, and they might attack." Take action against bad actors *if* they act, not those assembling, because the bad actors *might* act. It's that simple. That's a Heckler's Veto, and frankly, nobody is entitled to one.

If a truckload of armed counter-protesters shows up and starts threatening violence, that's a clear and present danger. The state should address it, preferably by addressing the aggressors. Only if that's not possible is it okay to consider dispersing the whole crowd. What if someone in the crowd becomes violent in a way that can't be otherwise contained? Take action and disperse the assembly if no other option remains.

Public safety is a valid concern, but it can't be used as a pretext.

The right to assemble doesn't require a permission slip. It defends the unpopular, the unwelcome, and the unheard.

Article I, Section 2.B.2(ag). Freedom to Protest or Petition

Every Person has the Right to protest peacefully and to petition the government for change.

Government derives its just powers from the consent of the governed.

Let that sink in for a minute.

It means exactly what it says.

What is peaceful protest if not, at a minimum, a subset of the people saying, "We either have withdrawn or are about to withdraw our consent?" As long as they do so peacefully, the government can't stop them. Government only exists *because* of them.

'Peacefully' means not initiating violence, but protesters may not be punished if someone else starts a conflict. Protesters may defend themselves if they are attacked, and may not be called 'violent' or required to answer charges of violence for doing so.

"Peacefully" means not initiating physical violence. It should be common sense that only the instigators of violence should be held responsible for it, but that hasn't always been the case. Freedom Riders were called violent agitators for defending themselves from racist attacks. Protesters at lunch counter sit-ins were blamed for escalation when they defended themselves from physical attack. There are other examples for those who want to find them.

Self-defense is a fundamental right. In this Charter, it is also a constitutional one.[84] It would stretch common sense to suggest someone couldn't defend themselves – couldn't exercise

[84] **National Charter of the United States** (unratified), Article I, Section 2.B.2(e). Personal Security and Self-Defense. This right will likely receive the most attention in the context of the right to bear arms, but it is rooted in basic self-defense. It flows naturally from the Right to Life, **Ibid.,** Article I, Section 2.B.2(a). Right to Life, and the Right to Bodily Autonomy – **Ibid.,** Article I, Section 2.B.2(b). Right to Bodily Autonomy.

their constitutional rights – simply because they were at a protest. Protesters can't be punished for defending themselves from an attack started by another. Full stop.

Article I, Section 2.B.2(ah). Unenumerated Rights

> The absence of a Right in this list does not deny its existence unless expressly reserved for Citizens.

This is modeled after the Ninth Amendment, although it differs in scope.[85] Legally, it isn't extremely useful because the debate remains open whether this or that *is* one of those rights (although it does exclude a few, by limiting civil rights to those not reserved for citizens). But that's the point. It opens that debate. It acknowledges that no list of enumerated rights can ever be comprehensive.

That's for two reasons. First, it is practically impossible for any person or assembly of people to think of every possible right that should be considered. Secondly, it makes sure we, as a generation, remain humble. We can't know what rights will need to exist twenty, fifty, a hundred years from now.

The framers of the Constitution of 1789 couldn't even *dream* of the need for access to the digital sphere. How could they have enshrined that right? We, too, have no idea what the future needs will be. By explicitly acknowledging that other rights aren't *precluded*, we leave philosophical room for that future debate.

[85] *See* **Constitution of 1789,** Amendment IX.

The debate over unenumerated rights has raged in the United States for centuries. We haven't agreed on what they are. Still, we all agree that they exist, in part because the Ninth Amendment tells us that they do.

This passage makes the same full-throated assertion.

***Article I, Section 2.B.3 Civic Rights of Citizens***

> In addition to the Civil Rights listed above that apply to all Persons, Citizens are also entitled to the following Civic Rights.

We've just finished a lengthy discussion of the Civil Rights of all the people in the United States. In addition to those Rights, Citizens enjoy a special class of rights called Civic Rights. Those Rights come from the special relationship between the Citizen and the State. In this next section, I'll talk about those specific rights.

Article I, Section 2.B.3(a). Nationalit

> All Citizens of the United States must be considered Nationals of the United States under international law. Neither Citizenship nor Nationality can be involuntarily stripped under any circumstances by any government or authority. The existence of coercion negates the legal force of any otherwise apparent voluntary renunciation of Citizenship or Nationality.

Before we dive into this, we need to define some terms so everyone agrees on what we are discussing.

Citizenship is defined earlier in the Charter.[86] In simple terms, anyone born here or to a citizen is a citizen. There's a little nuance about indigenous people and foreigners, but that's the upshot. That's our internal relationship with our government. It defines how the government interacts with us and vice versa.

Nationality is similar, but it isn't the same. It's the legal bond between an individual and their nation-state for international law.

Think of the distinction this way: citizenship is our relationship with the government, but nationality is how all the other nations of the world see us and apply international law based on our government's assertions about that relationship.

Every person on the planet has the universal Human Right to nationality. This isn't a new concept. It comes directly from the Universal Declaration of Human Rights (UDHR) adopted by the United Nations.[87] The United States helped champion its development and release.[88] The Charter says, emphatically, "All Citizens...must be considered Nationals of the United States...." That line may seem strange. "Why," you might ask, "would the foundational law of the United States try to tell the rest of the world how to understand our citizens' relationship to the government?" And, if you understand that statement through that lens, I'll concede it doesn't make sense.

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[86] *See* **National Charter of the United States** (unratified), Article I, Section 2.A.2. Citizenship.

[87] **Universal Declaration of Human Rights (UDHR),** United Nations General Assembly, Resolution 217, Third General Assembly, Part A (December 10, 1948). Article 15: "Everyone has the right to a nationality."

[88] Eleanor Roosevelt chaired the UN Commission on Human Rights (1946-1952) that drafted the **UDHR**. She was widely regarded as the driving force behind the Declaration's creation and adoption. The U.S. voted enthusiastically in favor of the Declaration in the General Assembly. The Soviet Bloc, Saudi Arabia, and South Africa abstained.

But that isn't what that statement does. That statement places a burden on the *United States* government. Remember, the definition of nationality required the United States to make assertions on our behalf. This statement imposes a duty on the United States government to say that John Q. Citizen is an American national for purposes of international law. If you get captured by a hostile government or non-state actor, the government *must* work to secure your release. It doesn't have to go to war over you, but it has to advocate for you vigorously. In essence, the United States is obligated to be your lawyer on the international stage, with all the legal and ethical implications that carries.

As long as you are a United States citizen, your nationality can't be stripped. And, while it can be surrendered, your citizenship can't be involuntarily stripped, either. You also can't be forced or pressured into surrendering your citizenship or nationality. To the best of my knowledge, that hasn't been done in the United States, but authoritarian states do it. The only effective hedge against authoritarianism is to exclude it vigorously.

If nationality or citizenship could be revoked, how would that be done, and who would decide? When a state revokes nationality, it renders a person stateless – outside the protection of any government.

That's not a bureaucratic or legal consequence; it is civil death.

If a citizen breaks a law, by all means, punish them, but you can't take their nationality. Today, you might do that because they lied on their naturalization form.[89] Tomorrow, it

[89] This is the current U.S. policy.

may simply be because the Department of State disagrees with their political positions. Maybe they said something that offended the President.[90]

As long as humanity divides itself into a collection of nation-states, nationality will be so fundamental that it can't be subject to removal. Not under any circumstances.

Article I, Section 2.B.3(b). Passport and Return

> The Government may not deny a Citizen a passport or the Right to return to the United States except through a lawful extradition process.

Another key element of universal human rights is the principle that every person has the right to a passport from their country of origin. They also enjoy the right to return to country. Again, this is directly tied to the UDHR, which explicitly states, "Everyone has the right to leave any country, including his own, and to return to his country."[91] If a passport is required for entry into the United States (it is), then logically, the government can't deny its Citizens a passport.

The right to movement is fundamental to our national identity. This attitude, which most Americans still hold, has its roots in European settlers' immigration to the United States. At the time, travelers needed permission from the crown or their local lord to travel abroad. Some settlers fled their countries of origin illegally. The resentment from that experience has lingered longer than its memory, but it is wired into our American DNA.

[90] This hasn't been done, but it has been threatened. Specifically, President Trump has made that threat against Rosie O'Donnell.
[91] **Universal Declaration of Human Rights,** United Nations General Assembly Resolution 217, Third General Assembly, Part A (December 10, 1948). Article 13.

I can go wherever the hell I want, and the government doesn't get a say. They don't have to bail me out if I go somewhere dangerous, but they don't get to tell me I can't go. Look no farther than the Americans who traveled to Britain to serve as pilots there during the Battle of Britain, or to the Americans serving in the Ukrainian army today.

But the Right to travel and return is more than a cultural touchstone. It's also vital to a free Republic. Exile is simply illegitimate in a free society.

The purpose of exile is to punish or to remove people from civil discourse who are political rivals or otherwise inconvenient to the established powers-that-be. Punishment can be handled through the judicial system without resorting to exile. As far as removal of the "unwelcome," there is nothing more inherently undemocratic than silencing your rivals by removing them. Why not simply assassinate them and be done with it? Execute them summarily in the public square? You probably (rightly) recoiled slightly just reading the mere suggestion, but from the cold calculus of silencing dissent, those two options are equivalent. While the person in question retains their life if they're exiled, they've still lost their democratic voice.

So, what does that have to do with passports? It's simple. If the government can deny or revoke passports, what stops it from revoking the passport of a "dissident" while they are abroad? That's a factual imposition of exile.

Finally, the United States, like most nations, finds it helpful to have extradition treaties with various international partners. Under the Charter, lawful extradition is permitted.

All extraditions must meet the following requirements:

- A valid treaty in force at the time of the alleged offense;
- A formal written request from the foreign Government;
- Probable cause evidence acceptable under United States law;
- Judicial review of the evidence, treaty language, and written request; and
- Final approval and certification by the Secretary of State.

Since lawful extradition is allowed, how does it work? A Citizen may be extradited only under specified conditions. If a nation with a valid extradition treaty submits a formal written request, the courts and the Secretary of State review it. Is there a valid treaty in place? If not, no extradition. Does the treaty language include the charges spelled out in the petition? If not, no extradition. Does the petition present evidence acceptable under *our* laws as sufficient to find probable cause? If not, no extradition. If, and only if, the request meets all of the conditions listed here, the request must be approved.

No doubt, at the time of a treaty's ratification, the President and the Senate were convinced that the legal system of the partner nation was equal to our expectations of fairness. But what about treaty partners whose systems have changed enough since ratification that they no longer meet those conditions? What if, after a revolution, a coup, or a normal change in laws over time, that nation's legal system no longer meets our standards? History shows that this does happen. It's precisely for this reason that there has to be a vigorous review of the elements to be met before denying our Citizens their rights and shipping them to another country, outside of our jurisdiction.

Our citizens are still our citizens (remember the definition of nationality), even when another nation petitions for their extradition. They are entitled to the protections afforded by our law. If they can't receive them in the courts of the receiving country, the Secretary of State denies the request.

> No Citizen may be deported for any reason, except as permitted by constitutional process for extradition. A Citizen has the Right to leave or return to the United States.

This paragraph is an absolute blanket ban on all deportations of American citizens. It codifies the constitutional illegitimacy of exile. It finishes with a sentence reaffirming the right mentioned at the beginning of this subsection, and it does so in language that closely mirrors the UDHR.

Article I, Section 2.B.3(c). Residency

> All Citizens have the Right to live in the United States.

This provision reinforces the prohibition against exile. The government can't tell a citizen that they can't live in the U.S. Full Stop.

Article I, Section 2.B.3(d). Right to Vote

> Citizens who have reached the age of eighteen (18) may vote in elections and referendums. Registration shall be automatic at their place of residence according to their National Identification Number (NIN) upon reaching their eighteenth birthday. The right of felons to vote is suspended during any period of incarceration, but must

be restored immediately upon release, without regard to additional supervision or other remaining sentence. The sole exception is those convicted of Treason, who shall be ineligible to vote from the time of their conviction until their death.

Voting is fundamental. Without the right to vote, there is no democratic form of government. The United States is a paragon of voting rights, right?

Not really. We have a sorry history of denying the vote. We've denied it to some types of men, all women, African Americans, and so on. Felons are barred from voting in most states. If not, they are often required to jump through legal and procedural hoops before they can have their voting rights restored. The abuses and disenfranchisements are so well known, I'm not bothering to cite them in the footnotes – it isn't necessary. No, we have a terrible history of disenfranchisement.

This Charter aims to end that shameful legacy. This subclause broadly declares that every American citizen who is at least eighteen years old has the right to vote. Every American citizen is automatically registered to vote, and that registration is linked to their National Identification Number.[92] There is no weasel language about "as authorized by law" or any other nonsense. If you're a citizen who is at least eighteen, you are eligible to vote.

Convicted of a felony? Sure, your right is suspended *while you are in jail,* but it is automatically restored upon your release, even if you're on parole. Why? Because one of the ways the elites of the United States kept African Americans subjugated (and continue to

[92] *See* **National Charter of the United States** (unratified), Article I, Section 4 – National Identification Number (NIN).

do so, make no mistake) is by setting them up for failure. Ensure that they will commit felonies (like with the War on Drugs), then you've disenfranchised them. Remove their voice, and you remove their power. As a white descendant of slaveowners, I stand behind the restoration of the vote to felons upon their release on this basis alone. I can't undo the injustices of the past, but I can damn sure stand on business and refuse to participate in the injustices of the present.

There is a single exception, and it is one I can defend. If you commit Treason and are convicted, you're done voting in the United States. You undermined the legitimate government; why should you be allowed to participate in it?

As long as you don't levy war against the United States or adhere to our enemies, if you're an adult citizen, you can vote.

*Article I, Section 2.B.3($d_1$). Identification at the Polling Place*

> The sole identification that shall be required at the polling place shall be biometric or alternate identity verification.

Voter identification has become a flashpoint over the last couple of decades. It is the new poll tax, the new grandfather clause. This ends it. The National Identification Number is

linked to a biometric and, optionally, to an alternative verification method. All you need is a thumb or index finger to vote.[93]

*Article I, Section 2.B.3($d_2$). Provisional Balloting*

> If biometrics or alternate identification are not operating correctly, the Citizen may present a National Identification Card and vote provisionally. Provisional ballots must be verified in a matter prescribed by federal law within ten (10) days. All verified provisional ballots must be counted prior to certification of an election.

I know – what happens when the tech glitches? Isn't that an avenue to disenfranchisement? Nope.

If a citizen arrives at the polling place and their biometrics or alternative verification isn't working as intended, they may cast a provisional ballot. "Yeah, but those never get counted." In the immortal words of Rafiki, "Nope. Wrong again."[94] Under this charter's scheme, the government has a duty to verify the eligibility of all provisional ballots within ten days, and the election can't be certified until all eligible provisional votes have been counted.

Your vote counts. Technical glitches can go to perdition.

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[93] *See* **National Charter of the United States** (unratified),

Article I, Section 4.B. Biometric Requirements.

[94] **The Lion King** (Directed by Roger Allers & Rob Minkoff, Walt Disney Pictures, 1994).

Article I, Section 2.B.3(e). Peaceful Reformation of the Government

> Citizens, operating collectively, have the Civic Right to revoke, reform, or reassign the delegation of Power to Government institutions in any manner they deem necessary, provided that three-fifths (3/5) of them act together to do so.

Consent of the governed is a core theme of this Charter. For consent to be meaningful, it must be possible to withdraw that consent. At the same time, chaotic withdrawal or violent overthrow aren't reasonable solutions to bad government. This enumerated civic right does require many mechanisms beyond a supermajority requirement. Instead, it explicitly authorizes the citizenry to act and reform their government. Or, if they prefer, they can replace some or all of the government. They can't do it will-nilly, though. Fully sixty percent must act in concert. This protects against the "unjust and interested majority,"[95] but does not set the bar so high that it's functionally impossible to reach.

A critic will point out that there's no mechanism to validate that the three-fifths threshold is met. That is an accurate and somewhat valid critique. But it's essential to think about this provision in the context of what would be happening and under what circumstances. This provision would apply in a scenario in which sixty percent of citizens have lost confidence in the government to the extent that they are willing to change it. They wouldn't trust the government to make any validation, and it's likely such a government would resist their attempt in any case.

[95] **The Federalist, Number 10,** James Madison (1787).

This apparent weakness can be overcome. Just because the Charter doesn't outline a verification scheme doesn't mean there can't be one. Nothing prevents the leaders of a reformation movement from developing and publishing the scheme in advance, thereby ensuring transparency. That doesn't require government oversight. Right now, we can't know what specific circumstances would compel citizens to seek to replace the government. We couldn't, therefore, design a validation method that would make sense in their context. Just because we decline to reach across time and space and impose our vision on them doesn't mean they can't implement their own.

**Article I, Section 2.C. Civic Duties**

> Citizenship in a free government includes both the right and duty to shape the government.
>
> All Citizens must participate in the work of performing the Civic Duties necessary for the Republic to function and exist. Citizens shall be called for Civic Duty from time to time. Citizens shall be selected randomly via a Civic Lottery or other random process as provided in this Charter or by law. If a Citizen demonstrates a pattern of shirking those duties, then that Citizen will be charged with Failure to Fulfill a Civic Duty. If they are adjudicated guilty of this civic offense as defined in Article IV, Section 7, then their participation shall be compelled and supervised.

Freedom isn't free. It's a popular saying that people are free to throw around about soldiers being sent to war.

As a veteran, I get thanked for my service from time to time. That's already kind of weird and awkward. When someone does it and then uses their next breath to talk about how they're going to get out of jury duty next week, it makes me see red. Jury duty, election work, serving on advisory boards, and redistricting commissions—these are all vital to the health and success of our republic. When citizens shirk those responsibilities, our democratic systems corrode, eventually crumbling to dust.

This is very simple. Citizens *will* participate in the work of democratic government. If they do so when called, they serve only when called, and they are compensated. On the other hand, if they repeatedly shirk their duties, they will spend 16 hours each month for two years doing similar work without pay. Either way, the essential work of democracy gets done by the citizens.

***Article I, Section 2.C.1. Grounds for Excusal from Civic Duty***

Citizens may be excused from Civic Duty only for the following reasons:

1. Severe physical or mental disability that prevents them from serving, as confirmed by their personal doctor and a court-appointed doctor. If the two doctors disagree, the Federal Judge reviewing the petition decides.
2. Age seventy or older.
3. Legal custody of a child under twelve years old and serving would leave the child without supervision.
4. High school students who are currently attending classes.

5. Employees of a state or federal legislature or a court of law at any level.
6. Primary caretakers of someone who cannot care for themselves, as determined by a Federal Judge.
7. Citizens who cannot understand English well enough to participate.
8. Citizens serving active duty military service.
9. Individualized circumstances that:

    a. Would cause financial ruin beyond mere hardship; or
    b. Create an impossible choice between the legal obligation of civic duty and other legal obligations, not including employment.

Not every citizen can carry out their civic duties. It would be unreasonable to hold that against them. Here, the Charter lays out eight enumerated circumstances that authorize excusal from civic duties. Having work, owning a business, personal plans, and so on don't qualify for excusal. After all, nearly anyone can find a reason why civic duty is a burden. If a simple burden were enough to excuse someone, no civic duties would ever get carried out.

A Federal District Judge must review all excusal requests. Depending on how complex the request is, that review may be administrative, require a hearing, or both. The judge will decide whether the Citizen meets the requirements. Citizens who are excused for temporary reasons may be called again when their situation changes.

Some excusal requests require legal parsing. Since that's the case, every excusal request has to be approved or rejected by a federal district judge. This review may be administrative or may require a hearing, at the judge's discretion. If I were a district judge, my approach would be to let my Magistrate Judge conduct an administrative review and provide me with recommendations. I would only personally handle those cases requiring a hearing. That may not be the only plausible scenario, though. I'm not a judge, and I won't pretend to know how to do that job.

No other reasons for excusal are allowed. Work obligations, business needs, or personal convenience are not grounds for excusal.

There is always someone who says, "But I have to work," or "I have a business to run," or "My niece is graduating from pre-K that day." Those are all important things in our lives. They really do matter at the individual level. Still, they aren't good enough reasons to be excused from your civic duties.

To the extent possible, excusal requests should be handled on a broad, categorical basis, rather than for each instance of civic duty. Petitions for excusal must be available for submission online as well as in person.

When no reasonable means existed for advance notice of an absence, excusal can be requested after the fact. After the fact excuses can consider a wider array of mitigating factors to address the unpredictability and inherent chaos of the real world. However,

they must first be truly unforeseeable, and second, truly have limited or impeded the citizen's ability to participate in their duties.

Federal district courts already handle an enormous burden, and this provision asks them to take on even more. This subparagraph is designed to ease some of that burden for them. It also reduces the burden on citizens who have real grounds for excusal across the board. They don't have to reapply every time they are selected for service.

It also semi-automates the petition process for those who want that. The online petition relieves the burden from those who can't make it to the courthouse to file a petition in person (probably the very people who need the excusal in the first place). Still, some citizens distrust digital forms, and the paper petition option is open to them if they want it.

Finally, there is an escape hatch for people who had appendicitis or some other unforeseen calamity on the day of their service. Those people can file for excusal after the fact, but the bar is set at "no reasonable means for advance notice." That means, "Oh, crap. I forgot," doesn't meet the standard for this type of excusal. On the other hand, if your water heater exploded that morning or you had a car accident on the way to your service, you probably have a reasonable case.

Article I, Section 2.C.1(a). Tracking Unexcused Civic Non-Participation

Within three months of ratification of this Charter, Congress must appoint a federal agency to develop an accessible database of Citizens who have unexcused absences from Civic Duties. This database must be linked to the Citizen's National Identification Number (NIN). The citizen must have full access, via their biometrics or alternate

verification, to see the entirety of their NIN record. They may petition the appropriate agencies as prescribed by law for corrections of factual error.

In every instance of unexcused absence, the responsible agency (county elections office for election workers, etc.) must report the absence for entry into the database.

For the civic duty system to work, there has to be a way to track when people have unexcused absences. The problem is, some civic duties are relevant in one jurisdiction (local jury service, election work) while others are relevant in another (redistricting commissions). So how do we keep it all unified?

This subparagraph commands Congress to appoint an agency to develop and maintain an "accessible database" for tracking participation. Each citizen's record is linked to their National Identification Number, making it available to individual citizens and the government agencies responsible for tracking civic participation.

This doesn't require a wholesale expansion of the federal government, but it does mandate modest expansion to build and maintain this infrastructure.

The word *accessible* isn't filler. It is in the language for a purpose. Congress can determine the exact architecture and which agency will run it, but the system must be usable for data entry at every level of government.

Data entry needs to be open to various government stakeholders. Every overseeing agency has a mandated duty to record unexcused absences. More importantly, citizens must be

able to access the database to check the accuracy of their records and to request corrections where needed.

Article I, Section 2.C.1(b). Enforcement of Civic Duty

> At any time that a Person has at least two unexcused absences from Civic Duty, they may be charged with Failure to Fulfill a Civic Duty. If they reach four such absences, they must be so charged.

This subparagraph is straightforward. It spells out when a citizen *can* be charged with Failure to Fulfill a Civic Duty. More importantly, it also affirmatively states when that is no longer a matter of discretion. Once a citizen has four unexcused absences, charging isn't optional. At that point, the government is obligated to act.

***Article I, Section 2.C.2. Protections and Compensation for Civic Duty***

> No employer may terminate or otherwise retaliate against a Citizen for taking time off to Fulfill a Civic Duty. Whenever possible, it is advisable for a Citizen to give notice of such a duty to an employer in advance. Still, merely failing to provide notice cannot, on its own, constitute grounds for termination or other adverse action against the Citizen.

Civic duties are vital to our free system of government. Only the most naïve idealist, though, would pretend there aren't employers who will punish or even fire employees who attend to these duties. We know it happens. This provision not only offers protection, it also closes an obvious workaround. "You didn't give me notice," or "You didn't give your notice to the

right person," or "You didn't give me *enough* notice," are all very foreseeable ways for an employer to try to claim the retaliation is really for not giving notice, when everyone knows it is really for daring to be absent, at all. The language here concedes that notice *should* be given, but failing to do so isn't enough to warrant punishment.

> A Citizen who is required to perform Civic Duty shall be paid no less than one-third the salary of a Representative. This amount shall be prorated based on the number of days, full or partial, during which the Citizen is required to report and fulfill their Civic Duty obligations. The time during which a Citizen is empaneled but released pending future dates or actions shall not be counted as active service. No statute may be written or enforced to withhold, reduce, or deny this just compensation.

Under our current system, the compensation for service is insulting and laughable. It creates real financial hardship for some people. In my home county – Harris County, Texas – when I google jury pay, I get a result of $30 for the first day and $58 dollars per day for subsequent days. That's $3.75/hr. for the first day (if you assume an 8-hour day), and $7.25 for each subsequent day. Meanwhile, if you don't arrive early enough for free juror parking (there's never enough), you have to pay anywhere between $10 - $40 for parking. The math doesn't math.

Under this Charter, while service certainly won't make you rich, you would earn one-third of the equivalent daily rate of a member of the House of Representatives. That is mandated at the 90$^{th}$ percentile of individual income at the time of the last census. So, at the time of this writing, that figure is $140,000. One-third of that is $46,667 per year. The average

number of working days in a year is 260. So, by that measure, a person serving to fulfill a civic duty would get paid $179.49 per day for their service. That's hardly enough to retire on, but it does compensate for their service more fairly.

It's important to note that this compensation is a floor ("shall be paid *no less than*…"). Nothing prevents a local jurisdiction from supplementing that amount if it chooses to do so.

Final protection is baked in. Statutory law can't repeal or otherwise burden this pay. It belongs to the citizen as compensation for their service. It's our money anyway. We paid the taxes.

## Article I, Section 3 – Sovereign Power

Section 3 keeps a laser focus on protecting people's rights and on citizens' power to review the powers they have delegated to the government, which rounds out a vital framing. Where the Constitution of 1789 has three coequal branches of government, this Charter has effectively established a fourth, sovereign, though informal, branch: the Citizens of the United States. This is a shortfall in the Constitution of 1789. Section 3 locks that sovereignty in, so that future courts and governments must respect it. It establishes the enforcement mechanisms that assure citizen sovereignty and prevent its erosion.Article I, Section 3.A. Specific and Implied Powers

> The Citizens delegate specific Powers to Government institutions through this Charter. No institution may exercise authority that is not explicitly or implicitly granted by the Citizens in this Charter and its Amendments.
> No agency or official may exercise implied powers to create programs or practices that are likely to suppress, discourage, or chill the free exercise of any Right listed in this Charter.

These statements reiterate that the government doesn't exist on its own. This idea is so fundamental to this Charter that Article I, Section 1 began with it.[1] The Charter restates that absolute principle here, after the long enumeration of rights. This Charter is about the rights of the people. It's a way for the people to set up a government that protects their

[1] **National Charter of the United States** (unratified), Article I, Section 1.A. Sovereignty: "All political power in the United States comes from the Citizens. Government only exists because the Citizens delegate power to it."

rights. It gives shape to a government that exists because people create it and delegate authority to it. The authority remains vested in the people; therefore, the government can't exercise authority that the people haven't given it.

Does that mean that every possible authority the government can exercise is explicitly laid out in the Charter? No. That would be foolish and doomed to failure. There's no crystal ball. We don't know everything. No one can. There's authority that's implied by the language of this Charter, but not spelled out explicitly. That isn't new. It has always been the case, and, in a framework flexible enough to work in real life, it always *will* be the case. The phrase "…that is not explicitly or implicitly granted," acknowledges implied authority. But it builds a fence around it. The government can't just do whatever it wants.

"Well, that's just great, but you haven't told us how we know what's implied." How can we determine what's implied and what isn't? First, what is the purpose of the authority in question? Does it affirm and support the rights of the people, or does it limit them? Rights are paramount. If anyone tries to suggest that a power to restrict rights, even temporarily, is implied, they are mistaken. The Charter couldn't be clearer that rights are non-derogable. Second, is the implied authority necessary to support the explicit duties of the government? If not, there is a much higher burden to explain how it is implied in the Charter.

But who decides? The answer is simple. The courts do. There is an entire section of Article IV devoted to assisting the courts in interpreting this Charter.[2]

[2] *See* **National Charter of the United States** (unratified), Article IV, Section 5 - Interpretation.

Implied authority is real. But it has to conform to the underlying theory supporting this Charter: that government exists solely to secure our rights, never to curtail them.

**Article I, Section 3.B. Citizen Referenda and Review**

This subsection covers one of the most essential functions of the citizens under this Charter. This is where their power to oversee the government directly is set forth.

***Article I, Section 3.B.1. Periodic Review***

> Beginning in 2040, and every twenty years thereafter, a national referendum must be held. Its purpose is to determine whether the People reaffirm the delegation of their Sovereign Power to the government under this Charter. The referendum shall occur during the regularly scheduled federal election of that year.
>
> The ballot shall present the following question:
>
> "Do you wish to continue delegating your Sovereign Power to the government as outlined in the National Charter?"
>
> Voters shall respond either "Yes" or "No." If "No" receives three-fifths or more of the votes cast, Consent shall be deemed *In Question*.

This is a fundamental question that every generation must address. "Do we, as a people, still consent to this government?" It's a deep and heavy question.

I'm willing to bet that a significant fraction of you who are reading this commentary are thinking, "Sure, there are some good ideas here. But changing the *whole* Constitution of 1789 at once is too risky."

Thomas Jefferson wasn't present at the Philadelphia Convention, nor during the ratification fight. He did write many letters to provide input, though. He believed a generation lasted 19 years. He also thought, "the earth belongs always to the living generation."[3] His idea was a full constitutional convention every generation. That's an idea that was rightly never adopted. It seems generous in principle and morally sound, right? Especially for a nation founded on the Lockean ideal of consent of the governed? But that much automatic change has always seemed too disruptive.

As a people, Americans don't have much appetite for wholly transforming our government. It's scary.

But the bigger idea is still simmering on the stove. If replacing the Constitution of 1789, or any governing document, based on an artificial timetable is untenable, how do we create an escape valve for the pressures of widespread dissatisfaction short of armed rebellion? After all, surely that's even worse, right?

What if we take something *like* Jefferson's idea, but not a full convention? What if we have a referendum every twenty years (because 19 years is a weird number for us to wrap our brains around)? Citizens can express their continued consent or raise a question about it.

[3] **Letter from Thomas Jefferson to James Madison** (September 6, 1789).

That's what this provision does. It doesn't mandate *any changes*. It simply states that, every twenty years, the citizens may decide whether to continue their consent.

And if sixty percent of them say no? The government isn't overthrown; it is considered "in question." Note that the language doesn't state that the then-existing government is illegitimate. It says it is in question.

And that "question" isn't just the whim of a bare majority. It is sixty percent of the votes. That's a solid supermajority. It is also the same threshold required to ratify the Charter in the first place.

Article I, Section 3.B.1(a). Convention and Term of a Demi-Congress

> When consent is in question, Congress must convene a Demi-Congress no later than January 31 of the odd-numbered year immediately following the referendum. The Demi-Congress shall be composed of one Citizen selected at random from each State and Territory. The intertribal council of federally recognized Tribes may also select one of its members who is a citizen of the United States to represent its interests in the Demi-Congress. All members of the Demi-Congress, regardless of their origin, shall have an equal voice within the Demi-Congress.
>
> The Demi-Congress must complete its investigation and submit a public report, including findings and any recommendations, by December 31 of the same odd-numbered year.

The citizens have voted by a wide majority to place their consent to the current system in question. OK. What do we do about that? What we *don't* do is panic. What we don't do is take precipitous action.

And, of course, what we don't do is ignore that full-throated cry from the sovereign body of the United States.

The next step is for Congress to convene a Demi-Congress and to do so promptly. This subclause directs Congress to do that by January 31 of the following year. Since federal elections occur at the beginning of February,[4] it must do so within roughly three months.

But who is in the Demi-Congress, and what does it do?

The citizens are the sovereign body of the United States. The government has power only because the citizens have delegated it. Since the citizens have placed consent in question, only they can address that question. It isn't a matter for Congress. A citizen lottery is held to pick one citizen at random from every state and every territory to represent that state or territory. Additionally, the membership of the federally recognized sovereign Tribes may select one of their people who holds United States citizenship to represent their interests in the Demi-Congress.[5] [6] The final mandate on membership in the Demi-Congress is that all members have equal standing. Territories have the same voice as states, as does the collective body of recognized Tribes.

[4] *See* **National Charter of the United States** (unratified), Article VI, Section 1.A.1. Timing and Access.
[5] *See* **Ibid.,** Article II, Section 6.B.1(c). Tribal Senators.
[6] *See* **Ibid.,** Article I, Section 2.A.2. Citizenship *for clarification of the citizenship status of Tribal members*.

A sharp critic will cry out that this perfectly equal representation by political division is undemocratic. It is, and if this body were to enact laws, that criticism would be valid. The Demi-Congress, however, does not enact laws. Their mandate is explained next. Here, it's enough to say they are required, as a body, to submit a report by the end of the year with recommendations, if any, for constitutional reform. They are not empowered to enact legislation or implement constitutional change.

Article I, Section 3.B.1(b). Scope and Work of the Demi-Congress

> The Demi-Congress shall be vested with the authority to investigate the causes of public dissatisfaction with the Charter, and it may design and recommend potential remedies, including reforms, amendments, or structural changes.

The Demi-Congress has a vital role. Their job is to investigate *why* the citizens voted to put consent in question. Once they've done that, they are given the authority to put together proposals or recommendations for changes. That may be in the form of amendments, suggestions for commands to Congress for reform legislation, or proposals to change the size, scope, or structure of the government. In short, the Demi-Congress is tasked with preparing a report outlining what they found about why the citizens put consent in question and making suggestions on how to remedy those perceived failures. As serious as that work is, they don't have the authority to *enact* anything. Their scope is limited to investigation and recommendation.

The Vice President of the United States shall preside over the Demi-Congress. In this role, the Vice President shall serve solely as a neutral arbiter of parliamentary procedure and may not participate in deliberation or influence outcomes.

Only members of the Demi-Congress can vote or speak, but the Vice President is expected to preside over their work as a chairperson. The Vice President is also presumed to be the go-between to communicate between the Demi-Congress and governmental institutions. They have no role beyond that. They are strictly to act as a facilitator.

Congress must fully fund the Demi-Congress from the legislative budget. The Demi-Congress shall have the power to commission public opinion research, conduct hearings, request testimony, and consult expert advisors as it deems necessary.

Congress doesn't get to play funding games with the Demi-Congress to influence or limit their ability to carry out their mandate. Congress has to fund them. And the Demi-Congress has the authority to carry out that work, even at the expense of the government.

Article I, Section 3.B.1(c). Public Education Period

If recommendations are made, a period of public education shall begin on January 1 of the next even-numbered year. The Demi-Congress is responsible for this education phase. They will ensure fair representation of both sides of each recommendation. They will ensure broad-based communication with the public. To this end, they shall be assisted by the Federal Elections Commission. This communication and education

includes online segments and virtual public forums, as well as advertisements in various media.

Whenever a Demi-Congress makes recommendations, there will be a referendum the following November. In the interim, there needs to be broad-based public information for the citizens that explains the merits of both voting for and against each recommendation. A pipefitter who works fifteen hours a day, six or seven days per week, probably was not following the day-to-day work of the Demi-Congress. This period of public education is essential to help the general citizenry "catch up." In essence, it's the "TL;DR" of the periodic review process.

This second year of service from the Demi-Congress is devoted to broadening the debate from their deliberations to the public at large. With help from the FEC, the Demi-Congress is responsible for presenting both why the public should adopt its recommendations and why they might consider rejecting them.

Article I, Section 3.B.1(d). Referendum on the Question

Each recommendation must be submitted to a binding national referendum held during the next regularly scheduled federal election. If three-fifths of the voters confirm a recommendation, it is adopted. Otherwise, it is not. The results of the referendum shall be binding. The outcome of the vote shall close the Question until the next scheduled twenty-year review or until the People initiate a new review through lawful procedures.

Whenever a Demi-Congress convenes and offers recommendations, each recommendation is voted on separately in the next federal election. The citizens vote, and if 60% of voters adopt it, the recommendation passes and becomes law. If they don't vote to adopt it, then the recommendation doesn't pass. It's that simple. Regardless of the outcome, consent is no longer in question after the vote. Consent is assumed (unless withdrawn some other way, as outlined in the Charter) to be reinstated until the following twenty-year review. Failure of a recommendation doesn't leave a perpetually hanging question of legitimacy.

Article I, Section 3.B.1(e). Non-Exclusivity Provision

> Nothing in this Section limits the Citizens' Power to initiate Charter revision or replacement through the procedures defined in Article VI, Section 4.

Suppose a recommendation doesn't pass, but a group of citizens can later gather enough support for reconsidering a recommendation under the provisions of Article VI. In that case, neither B.1(d) nor any other part of this subsection prevents them from doing so. The only finality is that the challenged review is no longer open. Their reintroduction of a recommendation is an entirely new and separate matter.

Article I, Section 3.B.1(f). Prohibition on Government Interference and Obstruction

> No branch or official of government may obstruct, delay, interfere with, or refuse to administer the referendum or processes described in this Section. Any such act constitutes a breach of this Charter and may be challenged by any Citizen, including under Civic Standing as defined in Article IV.

This subclause is necessary. It prevents any part of the government, which might have an interest in preserving the status quo, from interfering in the sovereign affairs of the citizens. Anyone who attempts is expressly risking a challenge in court.

**Article I, Section 3.B.2. Challenged Review**

> Any government statute, executive order, agency rule, or court ruling—by Congress, the Executive, the Judiciary, or a federal agency—that directly affects the Rights of Persons or the Powers of the States may be challenged by a Citizen Review Petition.
>
> At least three percent (3%) of eligible voters must sign the petition within one hundred eighty (180) days of the action taking effect, and the petition must be submitted to the Speaker of the House. The House of Representatives may determine the specifics of that mechanism, but it may not impose a burden on the petitioners.
>
> If those conditions are met and injunctive relief is requested, the challenged action shall be suspended. Otherwise, the action may proceed but must be reversed if the People reject it in the ensuing referendum.

The Supreme Court overturned *Roe v. Wade (1973)*[7] in their ruling on *Dobbs v. Jackson Women's Health Organization (2022).*[8] There can be debate on whether that was rightly or wrongly decided. That's not my purpose in using it as an example. What isn't open to

[7] *Roe v. Wade,* **Volume 410, United States Reports,** opinion begins at page 113 (1973).
[8] *Dobbs v. Jackson Women's Health Org.,* **Volume 597, United States Reports,** opinion begins at page 215 (2022).

discussion, but is a recorded fact, is that a majority of Americans disagreed with the decision.[9]

The problem, under the Constitution of 1789, is that when there is a widespread public opinion against a ruling, law, or government action, there's not much recourse for the public to exercise its sovereignty and reject the action. *If* a person can show real harm done (past tense) to themselves, they *might* be able to sue (if sovereign immunity or standing don't get in the way), but only *after* the harm is done. If they can meet the high standard of demonstrating that irreparable harm is likely to occur, they may request an injunction.

Short of convincing Congress to enact laws (really hard) or ratify amendments to the Constitution (almost, but not quite impossible), there aren't any other means of recourse available to the citizens. And it's the citizens who are supposed to be the sovereign. Remember "We the People?"

The process of a challenged review affords the sovereign body of citizens the ability to speak out against such actions. It still isn't easy. It shouldn't be. We have courts, Congress, and the administrative state for a reason. James Madison and others fretted over the tyranny of the majority for a reason. But if there is sufficient consensus, the citizens can challenge under this clause.

If 3% of the eligible voters in the United States sign a petition to challenge a government action within 180 days, and they file it with the Speaker of the House, a challenge process

[9] Repeated polling by Pew, Gallup, CNN, CBS, and others showed widespread majorities who opposed the ruling.

begins. First, if their petition requests injunctive relief, it's granted. Second, the petition forces a referendum on the action itself.

"But the House will make it hard to submit the petition." The Charter explicitly precludes that; the process can't impose a burden. There's a subtlety to the language there that you may have missed. It says "burden," not "undue burden." Congress can't screw around with this and make it hard to submit. That's unconstitutional.

Returning to our example, in the wake of the *Dobbs* decision, it's almost certain the three percent threshold would have been met, and a petition would have been filed. I can't jump into an alternate timeline and say that definitively, but based on public outcry and polling, that is more than merely likely. On the other hand, the Affordable Care Act was unpopular when President Obama signed it into law. But it probably wouldn't have been unpopular *enough* to gain the support in a petition required to trigger a challenged review.

When a challenged review is triggered, the originating authority must provide a formal written justification in clear and accessible language. This justification must be written at a level understandable by the majority of the citizens. It must explain the reason for the measure and its intended effects.

This justification must be easily accessible to all Citizens. The originating authority must make it available at least ninety (90) days before the next Federal Election. If the timing of the challenge makes it impossible to provide that justification in time, the review will be decided in the following year's Federal Election, instead. When this

extension is required, the originating authority must publish its justification within thirty (30) days of initiation of the challenge. If it fails to do so, the action in question is nullified. Under those circumstances, all laws revert to their previous state.

This is pretty straightforward. The courts, Congress, the EPA, whoever…. They must provide a written justification for their action. It has to be in plain language, so the dense legal reasoning of a court decision doesn't qualify. This should be something that, frankly, can be accomplished in a day or two. Surely, there are policy papers, legal opinions, Congressional transcripts, et cetera to use in preparing that defense.

All that remains is to make sure the general public can understand them. This justification has to be published at least ninety days before the referendum.

If the math doesn't work to make that possible, then the referendum can be deferred to the following year. That deferral doesn't relieve the burden on the justifying institution, however. They have only thirty days from the triggering of the challenge to file their defense. If they fail to do that, the referendum becomes moot because their law, decision, rule, or other action is immediately and automatically overturned.

The referendum shall be binding. If three-fifths (⅗) of Citizens voting reject the action, it must be reversed in full within ninety (90) days unless reversal is impossible, in which case a public remedy must be enacted by law.

This concludes the clause, codifying the will of the voters as binding law. It also establishes the same three-fifths standard for citizen referenda that appears elsewhere in the Charter.

If a complete reversal isn't possible for some reason, Congress has a duty to legislate a remedy.

This is the people's veto.

## Article I, Section 4 – National Identification Number (NIN)

The idea of a National Identification Number, or of a National ID card, has been debated for decades. For decades, the American people have largely resisted it. I've been one of those people.

But working through several of the reforms in this Charter, I became convinced of the need and utility of national identification.

Need and utility don't mitigate risk. As I've designed this system, I've kept my focus firmly on two things: data security and protection against misuse.

In this section, I'll walk you through every part of this system. I want you to see exactly what I've proposed and why I believe it protects the people.

### Article I, Section 4.A. Mandatory National Identification

> All Persons within the United States shall possess a National Identification Number (NIN).

To get started, notice that this says, "All Persons." This applies to everyone – citizens and foreigners alike.

The Federal Government must issue the NIN, and the State or Territory of their primary residence must provide an Identification Card linked to their NIN. The Identification Card will conform to a national standard.

The number comes from the feds. It isn't something the states control. But the states *do* issue the ID card. Even that, though, is uniform – it has to "conform to a national standard." The purpose is to ensure that states can't create policies for rejecting applications at their discretion. They also can't unilaterally say that an Identification Card issued in a Territory, for example, isn't valid. It means no state official can say, "This isn't the right kind of ID," or other similar bureaucratic claptrap. The single, uniform card is acceptable.

> This requirement applies to all Citizens, lawful permanent residents, and temporary residents with authorized status.
>
> Individuals present on diplomatic or tourist visas are exempt from this requirement.

This dials it in. The only people exempt from the requirement to have a NIN are tourists and diplomats. Citizens and legal immigrants alike must have one.

> Foreign nationals awaiting immigration adjudication shall receive a provisional NIN, which shall be revoked or converted to a permanent NIN, depending upon the outcome of their adjudication.

This is pretty simple. If you arrive in the U.S. and you aren't a diplomat or a tourist, you get a provisional NIN. Once your status is resolved, either your NIN is revoked, and you must leave, or your status is regularized. Immigration status is linked to the NIN, so there is never any question whether a person is lawfully present. Since NINs are biometrically linked,[1] immigration enforcement can check status immediately.

Each individual gets an individual number. No games.

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[1] See **National Charter of the United States** (unratified), Article I, Section 4.B. Biometric Requirements.

**Article I, Section 4.B. Biometric Requirements**

> Each NIN shall be linked to digitally encoded biometric data consisting of the thumb or index fingerprint from each hand of the cardholder. At least one alternative verification method shall be established by Congress within six months of ratification of this Charter for Persons unable to provide fingerprint biometrics, and for use where use of fingerprints is not practicable, or at any time the person in question prefers to use it over biometrics.
>
> Congress shall have the right to revise the alternate verification method(s), provided that:
>
> 1. Any such change is announced with not less than eighteen (18) months' notice before taking effect; and
> 2. At least one functioning alternative method always remains in effect.

Why biometrics? Why make a big deal about this?

Have you ever gone for a jog without your wallet? What if, while you were jogging, some official demanded that you prove you're a citizen? That is happening in America right now, as I write this commentary.[2] With a biometric link to their National Identification Number, anyone – citizen or not – can prove their status.

[2] *Dozens Detained in U.S. Immigration Raids in New York State*, CNN (September 9, 2025), https://www.cnn.com/2025/09/09/cato-new-york-ice-raid, last visited by this comentary author in October 2025. There are many other examples beyond this incident.

For those few who can't provide a fingerprint, as well as those who prefer an alternative method, there must be an alternative method of identification that links them to their NIN. Congress decides on the alternates, but it must give a year-and-a-half notice before any changes take effect.

There must never be a time when someone can't prove their identity simply because they have no ID card on their person.

**Article I, Section 4.C. Issuance**

***Article I, Section 4.C.1. Birth***

A new National Identification Number (NIN) must be generated at birth, and biometric data recorded if physically possible. Midwives, hospitals, and other medical professionals have an affirmative duty to ensure a new NIN is properly created.

In instances where births occur outside of the confines of a medical setting, the mother or her next of kin (besides the infant) must execute an affidavit of birth with the State or at an Embassy or Consulate.

If the birth occurred in the United States, the affidavit shall so indicate and will be properly executed once submitted to the State.

If the birth occurred outside the United States to one or both parents who are U.S. Citizens, the affidavit submitted at the U.S. Consulate or Embassy must include the

mother's name. If the Citizenship of an infant relies on the Citizenship of the father, the affidavit must also include the name of the father. The affidavit will be sworn in person to be considered executed.

Regardless of the means of execution, upon properly and fully executing an affidavit of birth, a NIN must be issued.

Going forward, every person born in the United States will have a NIN assigned at birth. If a child is born outside the U.S. to one or more citizen parents, then there's a mechanism to get a NIN under those circumstances, too.

This is more than just a bureaucratic detail. Article I, Section 2.A.2 established that anyone born in the United States or to citizens of the U.S. is a citizen themselves. Issuing a NIN at birth fixes that critical legal status. It ends the need to obtain birth certificates for various purposes; it's built into the NIN. It also answers any questions about infant citizenship. Everything is clean and documented.

***Article I, Section 4.C.2. Immigrants and Other Foreign Persons***

A National Identification Number (NIN) shall be generated upon arrival for immigrants, humanitarian parolees, and asylum seekers at their point of entry, and biometric data must be linked at that time. In these cases, an Identification Card must be generated on the spot and presented to the foreign person.

When someone enters the United States legally, through a port of entry, a NIN is issued on the spot, and biometric linking is completed then and there. Finally, and as an exception to the usual state-level issuance, the National ID card is also issued. Foreign nationals get a NIN upon arrival.

Critics will jump on this as an immigration-law workaround. Those arguments are in bad faith. As noted in Article I, Section 4.A, these remain *provisional* until their legal status is resolved. The mere possession of a NIN by a foreign national is not the same as a work permit or permanent legal residence status. Immigration hawks will try to claim that it is, and they are simply lying.

Outside of designated ports of entry, any foreign national not in possession of a valid tourist visa or a NIN shall immediately be detained. They shall promptly receive a preliminary hearing in immigration court, where they may make a petition for asylum. If they choose to do so and meet the plausibility criteria established by law, the normal issuance of a provisional NIN will proceed. Otherwise, they are understood as illegally present in the United States and subject to deportation.

Whenever a foreign national is detained and has no NIN, they must get an immediate preliminary hearing. If they choose to make a petition for asylum, that petition gets a preliminary review immediately. If it is implausible, or if the foreign national chooses not to apply for asylum, that person is in the country illegally and is subject to deportation.

> Where lawful status is contested, biometric or Congressionally permitted alternative verification of a valid NIN shall serve as definitive evidence of lawful presence or the lack thereof. If an individual is lawfully present, they may not be deported absent charges of criminality, distinct from their immigration status. Such charges are not, in themselves, grounds for deportation. The individual retains their right to trial by jury and may only be deported upon being found guilty.

This is critical. This passage does two things. First, no more "papers, please." The biometrics are the "papers." And if that individual has a NIN, they can't be deported, unless they are also charged with a crime (under those circumstances, they'd have to be convicted before deportation).

***Article I, Section 4.C.3. Post-Ratification Transition***

> Birth issuance and issuance to foreign nationals upon entry shall begin not later than one (1) year after the date of ratification of this Charter.
>
> For those individuals living and residing within the U.S. at the time of ratification, there shall be a five-year period in which they may seek their National Identification Number (NIN), which shall be based on their Social Security Number or Taxpayer Identification Number. Congress must issue guidance in law regarding requirements for issuance of NINs to living persons; however, verification of citizenship or immigration status may not require the individual to make any payment to any level of government or any private organization to secure necessary documentation.

During the transitional period, the government, acting through the States, has the duty to find and enroll the homeless population into the NIN system.

So, we've got a way to issue NINs to babies and a way to issue them to foreign nationals arriving in the United States. But what about the 300+ million of us who are currently alive right now? How do we handle that chunk of people?

Simply put, there is a five-year transition period. It would be nice if we could snap our fingers and it would all be in place, but that's not reality. Those of us living in the U.S. at the time of ratification may request a National Identification Number, which is based on our Social Security Number (or, in some instances, our Taxpayer Identification Number). Congress may set verification rules, but no cost may be associated with verification. The state can't charge you for your birth certificate. Immigration and Naturalization can't charge anyone for verification of their immigration status. No one in government may compel any person to pay for required documents. "But that's a burden on government." I don't care. Government serves *us.* We aren't subjects. In a very real way, the government is *our* subject.

And, the homeless. We can't ignore them; without a NIN, they'll get deported. We also can't reasonably expect them to go to the government. So the government must go to them. The Charter recognizes that reality and mandates it.

During the transition period, whenever state or federal licensure is initiated or updated, a NIN shall be required, and the license shall be linked to the NIN. Any licensure, permit, or identification issued by a State or the Federal Government that, at the time of issuance, required proof of citizenship shall be deemed to satisfy all future requirements to prove citizenship for purposes of obtaining a National Identification Number or renewing said license, permit, or identification. Any legal detention shall require the issuance of a NIN if none exists. No law may require supplemental documentation from such individuals.

This forces conversion. Need to update your driver's license? Time to get your NIN. Getting a state license to sell insurance? Better get that NIN first. Got arrested and taken to the county jail for DUI? You are issued a NIN in jail.

For renewals, if you were required to prove your citizenship when your license was initially issued, you are covered. Only individuals who were not required to document their status to obtain their initial licenses must complete the verification phase. Care and verification are essential; bureaucratic nitpicking for its own sake gets jettisoned.

Utility companies, telephone companies, and banks shall begin accepting NINs on their records beginning one (1) year after ratification and shall require NINs beginning three (3) years after ratification.

This creates an incentive for individuals to get their NIN.

### *Article I, Section 4.C.4. Timely Issuance Obligation*

> The Federal Government has an obligation to issue National Identification Numbers promptly. Records verifications of existing Persons should be accomplished within ten (10) business days. Issuance to new births and to foreign nationals upon arrival must be accomplished upon request.
>
> Likewise, any individual who requests a National Identification Card from their state, upon verification of their identity through biometrics or alternative verification, must be issued one immediately.

There's not very much to discuss with this clause. It simply means that the government can't stall in issuing either a NIN or a National ID card. The important point here is that, since the NIN is critical to civic life, the government has a duty to ensure there are no delays in issuing one.

### Article I, Section 4.D. Comprehensive Data Integration

> All immigration status, felony status, residency information, voter registration, and federal or state licensure must be linked to the National Identification Number. All civic duty participation shall be linked to the National Identification Number.

Here is the heart of the whole system. Everything ties to a single legal identity, which is verifiable through biometrics or alternative verification. Registered to vote in this precinct? Check your NIN. Is your driver's license still valid? Check your NIN. Do you have a felony on your record? Check your NIN.

Everything is in one secure and verifiable place.

**Article I, Section 4.E. Privacy and Enforcement Restrictions**

Wow.

There is a lot tied to the National Identification Number. That's a lot of vulnerability if it isn't carefully protected. This entire subclause is devoted to that protection.

***Article I, Section 4.E.1. Commercial Use Prohibition***

> The National Identification Number (NIN) may be used for credit reporting purposes solely to confirm identity and identify bank data, when such information is requested directly from the financial institution in question.
>
> The government must not disclose any bank account or transaction data for this or any other purpose.
>
> Credit reporting shall not include access to biometric data or any other information linked to the NIN.
>
> The NIN shall not be used for any other commercial purpose.

This preserves the legacy of the Social Security Number for credit reporting while carefully constraining its use. The *number* can be used as an identifier for credit reporting, but that identifier can't link to any data retained in the national system for that purpose.

In other words, a potential creditor could reach out to a bank and say, "Gary Kimzey says he is a depositor. His NIN is xyz-pdq-abcd. Please report his credit and deposit history." That's fine. But that potential creditor can't go to the government and make the same request. In fact, not only may they not ask, but the government is also prohibited from answering any such question. The bank or creditor *can't* use biometrics or other information that's linked to the NIN, either.

When you apply for a loan, the government isn't involved in the credit decision, and the lending bank doesn't get to know whether you are a licensed insurance agent in Idaho, at least not from your NIN.

Finally, outside credit reporting, the NIN can't be used for any commercial purpose. Yes, utilities and phone companies are required by this Charter to collect and report a customer's NIN for residency verification, not for business purposes.

When you go to your local gym and sign up for a membership, they aren't allowed to ask for your NIN.

Simply put, the NIN is not for business. Period.

***Article I, Section 4.E.2. Law Enforcement Limitations***

> Law enforcement may require an individual to provide biometric or alternative identification if an officer or deputy has a reasonable suspicion that the individual has committed a crime or is in the process of doing so. In these cases, the National Identification Number (NIN) shall be limited to the identity, residence,

immigration/citizenship status, and court orders currently in force, such as arrest warrants or restraining orders, of the Person in question.

If you get pulled over for speeding, the cops can check your identity. They can even see if you have a warrant or a restraining order. But that's it. They can't see that you live in a high-crime area, or that you have $250,000 in the bank. They don't have access to your criminal record. On its own, it isn't relevant to the reason for the stop.

If ICE suspects you're in the country illegally, they can check that. But they don't get to know that you have a chiropractic license. It isn't relevant.

For any further access, law enforcement must obtain a signed judicial warrant to access additional data from the NIN, and the warrant must specify the suspected crime and the data that may be retrieved.

Sometimes, law enforcement has a compelling reason to request information that may be in the NIN system. If they have probable cause and can name what they are looking for, they can get a judge to sign a warrant that complies with this Charter[3] to get access to that information. They *can* still detain the individual briefly while seeking the warrant.

"What about officer safety?"

If you haven't already reached this question, you will. Let's pause here and address this.

[3] **National Charter of the United States,** (unratified), Article I, Section 2.B.2(l). Right to Privacy and Property.

Police work is inherently dangerous. This is a fact that a reasonable person understands. So, when a police officer or deputy enters service, they either understand or *should* know that what they're undertaking comes at the risk of their life. That isn't unique to law enforcement, by the way. Soldiers know it. Loggers know it. Refinery workers know it. Many professions know this.

That knowledge does not trivialize any of the risks that law enforcement takes. In fact, it makes it all the more admirable. Courage isn't the absence of fear; it's doing what needs to be done *even though* you are afraid.

Courage aside, the *presence* of risk doesn't negate the necessity of civil rights. I'll offer you a different argument in favor of the restraint of law enforcement in a moment. But first, let's look at it from the perspective of two individuals. Joe is a motorist. He was driving 95 miles per hour on a city street. Melanie is a cop. She pulled Joe over, which is wholly appropriate. The guy was a hazard. Melanie has the right to life and bodily autonomy, like any other person. But Joe has the right to privacy and property, just like anyone else. Melanie pulls Joe's NIN and finds he has a valid license and no warrants or other court orders against him. By itself, the fact that he was driving way too fast on a city street doesn't give her any reasonable suspicion of any other crime, but she wants to know whether he has a record. "Maybe he has assaulted police officers in the past," she thinks.

Her curiosity is natural, but her right to bodily autonomy and life doesn't negate his right to privacy and property. Is there ever an instance where it would? Of course, but bare

curiosity doesn't meet that bar. Melanie can exercise her rights as long as they don't interfere with Joe's.

Now, beyond the personal level, let's look at what law enforcement is. Law enforcement is one of two classes of government actors authorized to apply violence on behalf of the government. The other is the military.

That's not accidental. The reason is historical. It was only relatively recently that law enforcement and policing functions were separated. For most of human history, military agents performed law enforcement functions. The local lord's men-at-arms would beat you or arrest you or kill you for your crimes, according to their orders from their lord. The king's men handled more serious crimes, but the chain of authority was the same.

We aren't accustomed to thinking of our police as military agents, but in a real sense, they still are. If we shift our thinking to accept that reality, ask yourself this: Should a soldier have the right to deprive a civilian of their rights, just based on being afraid of that civilian? Because that's the argument at the heart of "officer safety."

I am sure this argument will be misquoted, misconstrued, and deliberately misrepresented. "Gary doesn't think we should worry about law enforcement's safety." That is definitely not what I said, and it is definitely not what my argument is. Here's the heart of it: if we expect our soldiers to uphold and defend the Constitution of 1789, or this Charter if it is ratified, shouldn't we have the same expectation of our agents of law enforcement? And if we do, don't we expect them to accept the same risk on its behalf?

Just as we do with our military, we take reasonable precautions. We train them, we equip them. We develop best practices and tactics. But we accept that the profession of law enforcement, like the profession of military service, carries inherent risk on behalf of the nation. That risk exists. It exists so that innocent people aren't treated as threats. That's all.

The purpose here isn't to tie the hands of law enforcement. Nor is it to needlessly endanger cops. It's to guard against the near certainty that if access is granted across the board, it will be abused – always with the best of intentions – but abused nonetheless.

***Article I, Section 4.E.3 Security of the National Identification Number System***

> Congress shall establish and maintain an agency to secure the National Identification Number system. At a minimum, that agency shall ensure data integrity and data security, and shall conduct a daily physical backup of the NIN system. The agency in question shall also consider emergent best practices for data security and must report annually to Congress with recommendations for security upgrades. This annual requirement is a minimum, not a limit. Backups will be physically secured and retained for a minimum of five years.

Hackers. This is about hackers.

It's also about glitches.

Both are realities in our digitalized world. An agency must be assigned to ensure the data in the National Identification System isn't compromised or stolen.

They also have an affirmative duty to make a *daily* backup and to store that backup in physical form for at least five years. Why? What happens if there is an EMP? Or, more plausibly, the data system goes down, or the data becomes corrupted? Backups allow the federal government to restore the system. Daily backups enable the agency to trace back to the most recent *uncorrupted* backup, since sometimes file corruption can hide for a little while.

Whatever agency Congress creates isn't *only* responsible for maintaining security and integrity, though. They are also constitutionally tasked with updating security protocols and providing recommendations to Congress to ensure the system remains secure and resilient. This is vital.

Subsection E protects you from unethical commercial use, law enforcement abuse, data corruption, hackers, and loss of data integrity. That's as ironclad as electronic data can get.

## ARTICLE II – THE LEGISLATIVE BRANCH

The first *formal* branch of government outlined in this Charter is the same as in the Constitution of 1789. It will be familiar. It is a two-chamber Congress. The Senate represents the federalist interests of the states. The House of Representatives speaks directly for the citizens.

But our current Congress is broken and dysfunctional.

1. The two major parties have taken control not only of majorities in Congress but also of the levers of Congressional governance. To demonstrate my point, carefully ask yourself these questions. I'll bet the first three will surprise you that I even asked them. Ask yourself why that is, as well.

- Why is there a Senate majority leader?
- Why are there Whips?
- In practice, only one party elects the Speaker of the House. Why is that?
- Why is partisan gerrymandering legal?
- Why do members of Congress get to serve for decades in the same seat?

The tendency is to shrug and say, "That's just the way it is." Why do we accept as natural things that have no constitutional or ethical justification?

2. The American people also lack confidence that their members of Congress actually do any work. I think they *do* work pretty hard, but *who* they work *for* is an open question.

3. Are members of Congress even expected to be ethical? Or is the current "ethics committee" a fig leaf to cover widespread corrupt practices like insider trading, self-dealing, and retirement directly to cushy think-tanks and lobbying firms?

4. Can the American people expect responsible budgets and freedom from the performative drama of government shutdowns and budget ceiling showdowns? I literally don't have to answer that question, do I?

5. Why do members of Congress get to set their own pay? Even after the Twenty-Seventh Amendment was finally ratified in 1992 – 203 years after it was proposed – Congress still essentially sets its own pay.[1] Isn't that a conflict of interest?

6. What about the extreme disproportionality in representation between less populous and more populous states? And how, in the course of fixing that, could we prevent the voices of less populous states from being drowned out entirely?

7. Territories have theoretical representation in the House, but it isn't meaningful because those representatives' votes don't matter. Sovereign indigenous tribes have *no* representation in the Senate.

8. Congress is so fundamentally broken that it needs to be reforged entirely. Patchwork fixes won't cut it. Article II redesigns Congress from the ground up. The Congress defined

[1] *See* **Constitution of 1789**, Amendment XXVII.

here is somewhat familiar in form, but it has been rebuilt to serve the people and our rights, not to preserve congressional power.

Article II of this Charter addresses:

- Term limits
- Transparent and effective budgeting
- Workday expectations
- Ethics enforcement
- More equal representation
- Plain-language requirements for laws
- Qualifications and manner of selection for office
- A basic – and binding – expectation for upholding the oath of office

As you read this Article, there will be places that seem unusually detailed for foundational law. You might be tempted to regard this as constitutional overreach. That's a rational response. Let me offer you an alternative frame of reference.

Congress has traditionally governed its own governance. It sets its internal rules. In fact, the Constitution of 1789 explicitly authorizes this.[2] This Charter also authorizes it within limits.[3] However, when a known mechanism is used to evade accountability, or when naked

[2] *See* **Ibid.,** Article I, Section 5.
[3] *See* **National Charter of the United States** (unratified), Article II, Section 1.C.3. Chamber Rules of Procedure.

party politics interfere with governance, the Charter intervenes. These interventions aim to prevent capture, deadlock, and bad-faith procedural gamesmanship.

This Congress is not Madison's Congress. This is ours. Remade to be accountable, bound by duty, and answerable to *us*.

## Article II, Section 1 – General Provisions

The Citizens delegate legislative power to a Congress made up of two Chambers: the Senate and the House of Representatives.

The purpose of the Senate is to represent the interests of the several States and the Tribes as Sovereign subdivisions, which are outlined in Article V.

The purpose of the House of Representatives is to serve as the voice of the Citizens.

Congress has no power of its own. It has the power that the citizens delegate to it. No more, no less. The first eight words of this section make that point emphatically. This is a restatement of the Charter's central premise: all government power originates with the citizens.[1]

Next, it defines the two chambers of Congress and describes their representative functions. The structure isn't new.

This Charter goes a step further, though. It explicitly links the representative functions of the House to the people and the functions of the Senate to the states. That was implied in the Constitution of 1789. Here it is explicit.

[1] *See* **National Charter of the United States,** (unratified), Article I, Section 1.A. Sovereignty: "All political power in the United States comes from the Citizens."

That's an improvement on its own. But the Charter does more. It gives a voice to the recognized tribes. They are unambiguously sovereign under this Charter.[2] Collectively, they have a voice in the Senate. That was never the case under the 1789 Constitution.

The Powers of Congress exist only to protect the Rights of the People.

Thomas Jefferson wrote, "That to secure these rights, Governments are instituted among Men."[3] Congress, as a major part of the government, only exists to secure our rights. His prose goes on, "…deriving their just powers from the consent of the governed…"[4] In this context, that means laws that Congress makes must have our consent. By affirming that congressional power is *delegated* rather than inherent, this Charter agrees with that principle.

But what does this "consent" look like? It certainly doesn't mean we participate in every Congressional debate or vote on every bill. This is a democratic republic, not a direct democracy.

It does mean that Congress is answerable to us. That doesn't just apply at the ballot box. Their legislation is subject to our review under the challenged review provision in Article I.[5]

[2] *See* **Ibid.,** Article II, Section 6.B.1(c). Tribal Senators**, Ibid.,** Article V, Section 1 – Structure of the Federal System**,** *and* **Ibid.,** Article V, Section 9 – Tribal Sovereignty and Federalism**.**
[3] **Declaration of Independence,** Thomas Jefferson, (United States of America, 1776). Paragraph 2.
[4] **Declaration of Independence,** Thomas Jefferson (United States of America, 1776). Paragraph 2.
[5] *See* **National Charter of the United States** (unratified), Article I, Section 3.B.2. Challenged Review.

We send Senators and Representatives to Congress to do a job. If they don't meet our expectations, we can hold them and their work accountable.

**Article II, Section 1.A. General Eligibility**

> No Person may run for Congress if they have been convicted of a felony in any State or under federal law. No non-Citizen may hold office in Congress.

A congressional office is a position of honor and of high trust. Those who send members of Congress to the Capitol do it with the hope they will be faithfully and ethically represented. How can someone who has been convicted of breaking serious laws be trusted to write laws?

"Yeah, but she was pardoned." Good for her. She doesn't serve her sentence, but the conviction still stands, legally. She remains disqualified.

"Their conviction was expunged. Can they run for Congress?" That's a different category from pardon. Expungement removes the conviction entirely. And since that conviction no longer has legal weight, they are not barred from Congress.

> A Person running for Congress must live in the State or District that they are running to represent and must maintain their legal primary residency in that State or District for the duration of their service. The Tribal Council established in Section 6 of this Article shall determine the residency requirements for its Senator.

A Senator represents the whole of a state. How can they do that if they don't even live there? A Representative represents the people of a defined district. The same question applies – if they aren't present in that district, how can they understand the needs and will of the people they represent? This paragraph demands that members of Congress live where they serve.

What about this sentence on the Tribal Senator? All of that makes more sense in light of Article II, Section 6.B.1(c), which establishes a Senator to represent the sovereign interests of the recognized Tribes. I'll discuss that in greater depth when we get there, but for now, let's address the residency requirement. The states existed as sovereign entities when the Constitution of 1789 was framed. While this Charter does not depend on a Compact of States, the history exists, and the social and political framing is established and understood by the states and the people who live in them. But the Tribes don't share that history. It is entirely appropriate to allow their sovereign institution (the Tribal Council) to determine the residency requirements for their Senator. That's especially true when you consider that they are located over the broad geography of the entire United States.

A Person otherwise disqualified by felony conviction may ask a special panel of the Federal Judiciary—composed of seven judges drawn by lot from among the sitting judges of the Circuit Courts of Appeal and the Provincial Appellate Courts, excluding all others—to restore their eligibility by showing clear and convincing evidence that the conviction was wrongful, politically motivated, or that they have demonstrated a sustained pattern of civic responsibility since their conviction.

A person convicted of a felony who seeks to stand for office may assert that their conviction was wrongful and occurred twenty years ago. Perhaps they have changed, or politics motivated their conviction. Whatever the reason, they may want to have their conviction reviewed.

This paragraph essentially says, "OK, buddy. Prove it. If you can, fine, but you have to face a panel of judges and convince *them*."

If a conviction was truly wrongful, the potential candidate has the opportunity to demonstrate this. If it was a political hit job, the potential candidate has the chance to prove that. It may have been entirely legitimate, but the potential candidate has been rehabilitated and has demonstrated a sustained pattern of civic responsibility since their conviction. If so, this process gives them a narrow pathway forward. It isn't easy, but it is intended as a last-ditch effort.

**Article II, Section 1.B. Term Limits**

Sometimes, a simple thing gets derailed by procedural complexity. No one is really the "bad guy;" the machinery just grinds down the principle.

The American people have consistently favored term limits for Congress for decades.

The courts have held that neither Congress nor the states may impose any limitations beyond those expressly outlined in the Constitution of 1789. That document explicitly states, "Each House shall be the Judge of the Elections, Returns and Qualifications of its Members".[6]

Still, in 1969, the Supreme Court held that the power to judge qualifications didn't extend beyond those specified in the Constitution of 1789 itself.[7] While that case wasn't about term limits *per se,* it foreclosed the notion of term limits through judicial interpretation, not the popular will.

Next, 23 state legislatures imposed term limits on members of Congress from their states. The thinking was that this was permissible at the state level. But in *U.S. Term Limits, Inc. v. Thornton (1995)*, the Supreme Court held that states can't impose term limits beyond those provided by the Constitution of 1789.[8] This decision effectively precluded term limits.

[6] **Constitution of 1789,** Article I, Section 5, Clause 1.
[7] *Powell v. McCormack*, **Volume 395, United States Reports,** opinion begins at page 486 (1969).
[8] *U.S. Term Limits, Inc. v. Thornton*, **Volume 514, United States Reports,** opinion begins at page 779 (1995).

Again, judicial interpretation subverted the will of the people. Now, the only route available under the 1789 Constitution is the amendment process.

Yet, the American people still want term limits.

Gallup conducted polls in 1994, 1996, and 2013. All those polls showed widespread support for congressional term limits. In those polls, between two-thirds and three-quarters of respondents stated they'd vote "for" term limits.[9] Specifically, the question asked was whether they'd vote for a *constitutional amendment* to limit the number of terms that can be served.

This isn't an artifact of the past. In September of 2023, Pew Research Center reported 87 percent of respondents supported "Limiting the number of terms that members of Congress can serve."[10] A study by the Program for Public Consultation found similar results.[11]

There's no reason, since we're talking about replacing the 1789 Constitution, *not* to include the term limits the people want.

### *Article II, Section 1.B.1. General Limits*

> Members of Congress shall be limited to four full terms in the House of Representatives and two full terms in the Senate.

[9] *Americans Call for Term Limits, End to Electoral College,* Lydia Saad, GALLUP NEWS (January 18, 2013), https://news.gallup.com/poll/159881/americans-call-term-limits-end-electoral-college.aspx.
[10] *How Americans View Proposals to Change the Political System,* Pew Research Center (September 19, 2023). https://www.pewresearch.org/politics/2023/09/19/how-americans-view-proposals-to-change-the-political-system/.
[11] *Congressional Term Limits,* PROGRAM FOR PUBLIC CONSULTATION, (Mar. 21, 2023), https://publicconsultation.org/congressional-term-limits/.

Any term limit is arbitrary. I thought about what limits to impose, and this is the choice I made. It seems I'm in good company, because when I did the research for this commentary, I discovered something. The number of terms I selected for each chamber reflects the consensus reflected in the polling cited earlier. Specifically, it draws on the research done in 2023 by the Program for Public Consultation.

> If a Member serves a partial term lasting less than half of a full term, the partial term does not count as a full term; however, anything longer than that is considered a full term.

This sets the rule on when to count partial terms. If no such rule is established, candidates will litigate the issue endlessly, with unpredictable outcomes. By settling the matter up front, the Charter closes the gate *before* the cows get out.[12]

***Article II, Section 1.B.2. Combined Limit***

> The maximum total allowable tenure in Congress is twenty full years, counting all terms, full or partial, in both chambers combined.

In some cases, members will move from one chamber to the other. When they do, this imposes an upper limit on their allowed time of service. In general, it allows for all four terms in the House and both terms in the Senate. So why include it? Because it closes a loophole that would otherwise allow an additional four years. Let me explain.

[12] Just to be crystal clear, the intent is to reduce the likelihood of litigation in the first place. If/when litigation arises, the courts will resolve the controversy as otherwise required in Article IV, Section 5 - Interpretation.

Anything less than half a term doesn't count toward the maximum number of terms. This language puts a hard cap on total time in Congress. It prevents the edge cases where someone might serve just under half a term in the House and just less than another half a term in the Senate, on top of their maximum number of terms. That kind of stacking would push service to twenty-four years. This prevents that kind of gaming.

**Article II, Section 1.C. Numbered Congresses, Timekeeping, Oaths, Chamber Leadership, and the Legislative Day**

This subsection defines the duration of each numbered Congress. It also sets constitutional rules on what defines a legislative year and a legislative day. Finally, it outlines specific procedures that must be followed on the first day of a new Congress.

This is important for two reasons. First, it defines some really dull, but vital, procedural stuff (I'll explain why with each provision). Second, it ensures that the legislature gets to work quickly after each new Congress begins.

***Article II, Section 1.C.1. Numbered Congresses***

> A numbered Congress is two years in length, beginning at 12:01 a.m. on January 2nd in odd-numbered years, and running until the same time of the next odd-numbered year. Each Congress is numbered, and that numbering shall continue the existing numeration in sequence.

This is a very straightforward provision. It lays out what a numbered Congress is, with a specific duration. The text requires that each Congress be numbered and mandates that the

numbering continue in sequence with the numbering currently in use. That makes it possible for historians and the people to know which particular body of citizens voted for this or that law.

> Each numbered Congress consists of two annual sessions, each of which follows the legislative year. The legislative year begins at 12:01 a.m. on January 2nd and runs until the same time of the following year.

There is absolutely nothing in this clause that is interesting or fun to argue about. It's just dull procedure. That's good. Dull procedure makes for firm boundaries.

***Article II, Section 1.C.2. Congressional Timekeeping***

> On the first day of each Congress, at 8:00 a.m. in the Nation's capital, the Chief Justice will administer the congressional oath of office to a single Representative, chosen randomly by lot. That Representative will act as Acting Speaker of the House until a new Speaker is elected.

Under this Charter, the oath of office carries greater weight than under the 1789 Constitution, where it was ceremonial. This Charter's oath is enforceable.

At the beginning of a Congress, every Representative technically begins a term, even those who have been reelected. Accordingly, each must be sworn in. The Chief Justice of the Supreme Court is responsible for administering the oath of office to a single Representative, chosen by lot. That newly sworn-in Representative becomes the acting Speaker.

The Acting Speaker of the House will then administer the oath of office to each Representative. Similarly, the most senior Senator whose term has not expired, determined by date of election, then birthdate, and finally alphabetical order of first, last, and other names, if necessary, will administer the oath of office to each newly elected Senator.

This subsection may seem like unnecessarily detailed nitpicking. Micromanagement, if you will. It's vital to spell it out, though. The reason is that there is a means to remove a member of Congress and bar them from ever holding any federal office again if they fail to uphold their oath of office.[13]

Article II, Section 1.C.2(a). Oath of Office

The oath of office in both chambers is the same:
"I, (full legal name), solemnly swear (or affirm) that I will uphold the Rights of the Sovereign People of the United States, who have entrusted me with this office and delegated to me the various powers that go with it. To that end, I will do my best to faithfully execute my duties as delegated through the National Charter of the United States and uphold its laws."

The wording of this oath is deliberate. First, the member swears to uphold rights. In other words, they affirm that they will perform the basic function that is the purpose of government in the first place. Then it requires the member to state that the powers they

[13] *See* **National Charter of the United States** (unratified), Article IV, Section 7.D. Failure to Uphold Oath of Office.

hold by virtue of their office are delegated to them by the people. Finally, and subordinate to citizen sovereignty and the rights-first approach, the member swears to execute the provisions of the Charter and uphold the laws of the United States.

Article II, Section 1.C.2(b). Election of Leadership

> Once all members are sworn in, each Chamber will elect its leadership by secret ballot in accordance with the Chamber's rules. Upon electing their leadership, the respective leaders will assign committees and chairs for those committees and will appoint or extend the appointments of the various support offices.

This provision covers the actions required immediately after swearing in. As soon as everyone is sworn in, the members of each chamber immediately move to elect leaders, according to the rules they have already established.

It's important to note that leadership votes are conducted by secret ballot. This Charter goes to great lengths to expand government transparency, so this may seem out of place, especially in Congress.

The reason for this is simple, and I'll be blunt. It helps to break the power of political parties. If no one knows how this Representative or that Senator voted on leadership questions, then retribution can't follow. If retribution can't follow, it becomes easier for a member of Congress to vote their conscience on leadership.

After their election, the new leaders make committee assignments and appoint committee chairs. Then, the leaders ensure there is leadership within the support offices. This means

that by the end of the first day, Congress should be fully operational. It should be ready for business and regular order.

Article II, Section 1.C.2(c). Legislative Day

> A legislative day begins at 12:01 a.m. and ends at the same time the following day. Congress may remain in session continuously, but must recess for at least one minute between legislative days to preserve the calendar and record.

I am sure that more than one person has read this subclause and asked, "What? Why is *that* in there???" It's an excellent question. I'm sad to report that I have an equally good answer. Congress often has specific triggers that occur after a certain number of days have passed, and so on. It has become a recognized tool to have a short, one-minute recess at midnight each night so that the "day" is never closed out.

It's ridiculous. It's an outrage. And it defies common sense. Garbage like this is why Americans dislike Congress so much.

While every possible loophole or clever trick can't be predicted, *this* one is known. So this subclause closes it. It sets a defined end to the legislative day, regardless of other parliamentary procedures.

***Article II, Section 1.C.3. Chamber Rules of Procedure***

> Each house of Congress shall set its own Rules of procedure.

Who decides who gets to speak in Congress? How are votes held? What are votes held for? Is there a particular time or day votes are held? These are all nitpicky details that are annoying and frustrating to consider, but they matter. This clause grants the House and the Senate the authority to adopt rules for their respective chambers. The House has rules of procedure, and the Senate can have an entirely different set, if that makes sense for them. This is a continuation of the current practice.[14]

> The Rules must be enforced by the Chamber Parliamentarian. The Rules shall have the force of law with respect to conduct within each chamber.

These two sentences are essential. First, the rules of each chamber haven't, in the past, been enforceable law. In the overwhelming majority of cases, this is not a problem. However, from time to time, order slips. This gives the rules legal teeth, where they lacked them before.

It also constitutionalizes the identity of the guardian of the rules in each chamber. Who has the role of enforcer? The language of this passage says it is the chamber's parliamentarian. This isn't new in practice, but it hasn't been constitutional law until now. It was open to change at the whim of a majority. That's dangerous; this locks that possibility away.

> If at any point the Chamber Parliamentarian determines that any Rule has been violated, they must issue a formal, written notice to the Leadership of the Chamber. The notice must be published in a prominent place, visible to all members. If the Rule

14. *Compare to* **Constitution of 1789**, Article I, Section 5, Clause 2.

> violation is not remedied to the satisfaction of the Chamber Parliamentarian, they must file suit in the Supreme Court against the Leadership of the Chamber, seeking injunctive relief and interpretation of the Rule or Rules in question.

What happens when a rule is violated? That's really the heart of it, right? If there's no method of correcting rule violations, why have the rules in the first place?

This procedural section permits the chamber to resolve a rules violation internally first; if that isn't done, it requires the chamber's parliamentarian to file suit against the chamber's leadership in the Supreme Court. That's because this Charter explicitly gives the Supreme Court jurisdiction over legislative rule disputes.[15] The Court will settle the dispute and provide any interpretation of the rule in question that is needed. This is similar in practice to the way the Court settles questions of constitutional law.

> Although each Chamber retains the right to write its own Rules of procedure, neither may it encode in those Rules any mechanism that favors faction or political party. Nor may the Rules include any provision that evades the requirements of this Charter, whether in function, outcome, or intent.

This passage is designed to break the partisan capture of Congress. I won't pretend to be able to predict the future well enough that I can stop every possible cheat of the system. I'm simply not that good. But designing a prohibition on writing rules that capture the levers of

15 *See* **National Charter of the United States** (unratified), Article IV, Section 2.B.6(b). Role and Jurisdictions (of the Supreme Court).

power in favor of whichever clique is most popular at the moment seems like a reasonable place to start.

**Article II, Section 1.D. Congressional Work Expectations**

The following rules ensure that Members of Congress meet the same basic expectations that apply to working Americans across the country.

Many Americans don't believe that members of Congress work very much. And if they do, it's not on the people's business. There's a strong suspicion that they're working on their own priorities – or someone else's. I'm not weighing in on that, but the perception is prevalent. Americans can't have faith in leaders whom they think aren't working. This has to be addressed.

These rules are the same ones most Americans follow in their daily lives. No one's saying members of Congress can't pursue their own goals or advocate for outsiders. But they're expected to spend time on the clock, and when they do, they're working for us.

The goal isn't only to compel Congress to act on our behalf – that's the minimum expectation. It's also to keep them in touch with the work expectations the rest of us face every day.

***Article II, Section 1.D.1. Excused Absences***

Members of Congress must attend all official duties unless excused for good cause by the leadership of their chamber. Each chamber shall set fair rules for reporting and

verifying such absences. Members who follow these rules in good faith are not considered in violation.

Just like any other employee in the United States, members of Congress are expected to show up for work. They may be excused if they have a good enough reason. That reason, though, has to meet the rules established by their chamber. It isn't just a case of sweet-talking the Speaker.

***Article II, Section 1.D.2. In-Session Workdays***

When Congress is in session, Members must work a full day of at least eight hours. Each chamber may set reasonable schedules, but the standard workday must be met.

This reinforces the expectation that members show up and work full-time. Most full-time employees in the U.S. work a full 40-hour workweek – many work more. The standard here sets the same floor for members of Congress. When Congress is in session, they are expected to be in the nation's capital (unless they're on an authorized junket), working for the people of their state or district.

Notice that I used the phrase "at least eight hours." This is a floor, not a ceiling.

***Article II, Section 1.D.3. Recess Workdays***

When Congress is in recess, Members must still perform official duties. They must maintain a daily schedule focused on district service, constituent outreach, public meetings, or official oversight. The eight-hour minimum workday still applies during recess, except for approved leave. Travel to or from the Member's district, or to

official meetings or delegations, counts as part of the workday. Commuting to or from their regular office does not.

Just because Congress is in recess doesn't mean members can spend their time as they please. They're expected to keep working, maintaining the 40-hour workweek. They may request leave from their leadership, but outside of that leave, they're expected to work.

Members of Congress have two places where they work. The first is obviously in the national capital, where they debate and enact laws. The second is in their home states and districts, where they are expected to prepare for sessions, meet with constituents, and so on. Both settings are part of the job – and both are mandatory.

A reasonable question is whether travel time counts as work time. The answer for them, just like for the rest of us, is, "It depends." Traveling on business is work time. On the other hand, I don't get to count my commute as work time. Most people don't. Members of Congress don't get to do it, either.

**Article II, Section 1.E. Constituent Engagement**

Each calendar year, Members of Congress shall spend between ninety (90) and one hundred twenty (120) days in their home districts or States, engaged in public service and constituent outreach.

This expands on the expectations outlined above on recess workdays. Members of Congress have between three and four months of recess each year. They are expected to be involved in their home states or districts during this time. "Constituent outreach" is

specifically mentioned here. That means town halls, public speaking engagements (as opposed to fundraising dinners), listening tours, and the like. They are supposed to face us and listen to us.

> These periods shall be scheduled in multiple recesses throughout the year, as determined by each chamber's rules. The House and Senate must coordinate their calendars to ensure these recesses occur at the same time. Recess periods may be shortened if Members are summoned back to the Capitol by the leadership of their chamber in response to an emergency or urgent national need. All remaining weekdays—excluding designated national holidays—shall be official workdays during which Congress is in session.

These recesses are to be broken up throughout the year, not spent in a single splurge of "away" time. Although each chamber has some flexibility in its recesses, they must be coordinated so that their recesses are concurrent. Why? Because it doesn't do much good for only half of the legislative bodies to be in session at any given time.

There is flexibility here to shorten recesses if necessary for emergencies.

Finally, there is a clear statement that, outside of recess and on weekends and national holidays, every day is an official workday.

> Reasonable exceptions for the unpredictability of weather and similar events can be made, if agreed to by the combined leadership of both chambers.

This passage is simple, reasonable language intended to authorize exceptions to the workday rules for extreme events – fires, floods, storms, and so on.

> Saturdays and Sundays are not considered workdays unless Congress is called into special session.

This clear language preserves the weekends for members of Congress unless unusual circumstances apply.

**Article II, Section 1.F. Mandatory In-Session Housing**

> Congress must provide each Member with a standardized residence suitable for family habitation. The Member must live in this residence when Congress is in session. It will include at least three bedrooms, two bathrooms, a kitchen, and a living space. The government shall cover maintenance, furnishings, and utilities. These residences ensure that Members can perform their duties in the Capital without undue hardship while preserving their home-district living arrangements. Congress may prescribe by law detailed regulations governing these residences.

This probably seems like an odd thing to include in constitutional text. And why so specific? Because it fixes two problems.

First, our current system has no housing for members of Congress. This creates a significant barrier to service. Only those wealthy enough to maintain a residence in their home state or district *and* one in the capital can afford to serve in Congress. While there's

nothing inherently wrong with rich people serving in Congress, Congress serves the people, either directly in the House or indirectly in the Senate.

Most of "the people" can't afford two residences. The very concept of enough wealth to sustain that kind of life for two years seems like a fantasy. We need people in Congress who can relate to that struggle. The only way to get them there is to ensure they have a place to live if they are elected.

The second problem is subtler, but at least as dangerous. Once upon a time, members of Congress lived in the capital with their families. They saw each other at dance recitals and barbecues, not just on the debate floor. Politics was vigorous, but they saw each other as people – husbands, wives, parents.

Over time, members started scurrying away every weekend for fundraisers and photo ops. The idea put forth was to avoid becoming "disconnected" in their bubble inside the beltway. However, there was no increased effort in truly connecting with the people living in their states and districts. Instead, they focused more on private meetings and fundraising. Their families continued to live "back home," and they began spending as little time in the capital as possible. Now the only time they see political rivals is as rivals, not as humans with families and ordinary interests.

This subsection aims, in part, to restore a sense of amity. A member may fight tooth and nail with someone in committee. That evening, they may run into the same person at a scout meeting, because their kid is there too.

It becomes tough to see your rival as an enemy when you spend time with them socially. This isn't the whole solution to partisan rancor in Congress, but it will help.

For it to work, there has to be housing – not just for the member, but for their family.

**Article II, Section 1.G. Compensation**

> Members of Congress are paid equal to the 90th percentile of individual income from the most recent decennial census.

Allowing Congress to set its pay creates a conflict of interest. The Twenty-seventh Amendment tries to solve this.[16]

It fails.

Deferring the start of that pay to the next session doesn't fix the conflict. Many of the same people are still there – two-thirds of the Senate is in the same term, not to mention the huge likelihood for incumbents to be reelected. It's the same people, just waiting a little longer.

The only way to avoid this conflict is to fix pay in the Charter itself. But how do we ensure it doesn't decline and become unduly low over time? Congress shouldn't be a pathway to riches, but the role matters. Members deserve generous pay that reflects that.

16 **Constitution of 1789,** Amendment XXVII. "No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened."

This solves the problem while ensuring a pinch on congressional wallets for inflation. Pay is set equally for Representatives and Senators.

By setting it at the 90th percentile of individual income,[17] we accomplish two things. First, that level is very high income, but not enough to make the member independently wealthy. It is the pay of a working professional.

Second, by tying it to the decennial census, members' pay declines over the decade when adjusted for inflation. Pay resets each census, but by year nine, it's a lot lower in real terms. That's not the same squeeze ordinary Americans feel, but it forces Congress to feel some of that pinch.

**Article II, Section 1.H. Miscellaneous Provisions**

This is a "catch-all" section for Section 1. It covers items that don't fit neatly anywhere else.

> Either Chamber may vote to expel one of its Members for serious misconduct, but only with a two-thirds (2/3) vote of all current Members of that Chamber. For this subsection, serious misconduct means ethical or legal violations as referred by that Chamber's Ethics Panel.

[17] An astute critic will point out that the census doesn't collect data on individual income during the decennial census. That data *is* collected, but that's done in supplementary census work. A transition provision is included in Article VII, Section 3.B.2(d). General Compensation.

This is similar to the authority each chamber has under the Constitution of 1789.[18] It hasn't been often, but it has been used. Given the enhanced attention to ethics in this Charter,[19] expulsion may be invoked more often.

> No Member of Congress shall receive special treatment, privileges, or titles unavailable to others. All Members are equal under the rules.

This ends perks for tenure (which shouldn't exist at all) or supposed rank. The people didn't vote for the Speaker; only the Members of the House did. Therefore, the people didn't authorize any special treatment for the person holding that office. Chamber Officers can hold *procedural* authority under the Chamber Rules[20], but not special privilege.

> Neither Chamber, nor Congress acting collectively, may create any rule or practice that violates the letter or intent of this Charter.

This should be common sense. Heck, it *is* common sense. But common sense doesn't stop bad-faith actors. This is a simple lock. Neither Congress as a whole, nor its individual chambers, can rewrite their rules to dodge the Charter's limits.

[18] *See* **Constitution of 1789,** Section 5, Clause 2.
[19] *See* **National Charter of the United States** (unratified), Article II, Section 2 – Congressional Ethics.
[20] *See* **National Charter of the United States** (unratified)**,** Article II, Section 1.C.3. Chamber Rules of Procedure.

## Article II, Section 2 – Congressional Ethics

This section takes up the ethics of Congress. According to a YouGov study published in January of 2025, 49 percent of Americans surveyed view corruption by members of Congress as a "very serious problem." Another 31 percent view it as "a somewhat serious problem."[1]

Eighty percent of them considered congressional corruption a problem.

That's unfathomable—eighty percent. When broken down by party, it was still 77 percent (among Republicans) vs. 82 percent (among Democrats). That might be the most bipartisan consensus left in American politics.

There is no way to shade this. No way to make it polite or easy to take. The American people think members of Congress are crooks.

That means faith in our government isn't just weak. It means the American people don't think their representative government represents them. Period.

If you don't hear that as an alarm bell, I'm not sure what you *would* hear that way.

This section is devoted to attacking that problem. It won't fix everything. Some of that will be left to the citizens working through other means in this Charter. Still, this section takes aim at several of those problems head-on.

[1] *Most Americans See Corruption Among Politicians, Judges, and Executives as Serious Problems*, YouGov (January 17, 2025), https://today.yougov.com/politics/articles/51398-most-americans-see-corruption-as-serious-problem.

**Article II, Section 2.A. Code of Ethics and Enforcement**

***Article II, Section 2.A.1. Congressional Code of Ethics***

> Congress will adopt and enforce a Code of Ethics that applies to all Members and staff. The Code must prohibit bribery, financial self-dealing, abuse of power, deliberate deception, and any failure to disclose conflicts of interest. It must require public financial disclosures and recusal from official actions where a conflict exists. This Code has the force of law under this Charter and may not be waived or weakened by ordinary chamber rules.

> The Code must be reviewed for updates at least every six years.

The first step here is to lay out the rules and the means of enforcement. This clause requires exactly that. It establishes minimum expectations. Leaving the Code to Congress doesn't mean it's toothless; the following three clauses provide strong enforcement mechanisms. This clause also explicitly states that the Code has the force of law. In other words, if a Member violates the Code of Ethics, they have broken the law. So, not only is a violation enforceable *internally,* but the behavior is also subject to legal action *externally*.

The clause finishes by requiring periodic review. It must be reviewed at least once every six years. It could be reviewed more often. This keeps the provisions current and aligned with the nation's needs. The intent is to avoid a code of ethics that makes a great deal of sense in an early 21st-century frame of reference, but none whatsoever in the 23rd century.

### *Article II, Section 2.A.2. Chamber Ethics Panels*

> Each chamber must establish a permanent Ethics Panel with at least twelve members, chosen at random from the chamber's membership, but excluding the Speaker of the House or the Leader of the Senate. Each chamber's Panel shall have the power and duty to investigate and recommend sanctions for violations by members of the chamber and their staff.

Establishing an Ethics Panel is *not* discretionary. It isn't optional. The word "must" means each chamber *will* have an Ethics Panel, whether it wants one or not.

Twelve members are chosen at random to serve on the Panel. The "how" is left to each chamber's rules, but they aren't hand-picked. And like a criminal jury, there are twelve of them.

Leadership is explicitly *excluded* from serving. That prevents interference and preserves their role when a case goes to the full chamber.

Finally, the Panel has both the power and the *duty* to investigate and refer violations. They're bound by their oaths to do the work. If they refuse, they can be removed from office.[2]

[2] *See* **National Charter of the United States** (unratified), Article II, Section 1.C.2(a). Oath of Office *and* **Ibid.,** Article IV, Section 7.D. Failure to Uphold Oath of Office.

The Ethics Panel for each chamber must convene for at least thirty (30) minutes weekly whenever Congress is in session. The Panel may be convened longer or more frequently.

This isn't micromanagement. It serves a purpose.

Leadership can't claim that the Panel doesn't need to meet, or that it lacks the authority to do so. If the Panel meets frequently but does nothing, the people will see it in the record.

***Article II, Section 2.A.3. Ethics Investigations***

The Ethics Panel must investigate ethics claims against members of Congress and other legislative staff.

Although complaint details may be kept confidential, the fact that a complaint has been raised must be publicly recorded in the Congressional Record. This record of complaint must include the name(s) of the Member(s) and/or staff under investigation, and a brief title stating the nature of the complaint.

This keeps the Panel from burying complaints. Every complaint they receive has to be documented. The details may be confidential, but the fact that a complaint has been raised, who it is against, and the general allegations can't be.

Complaints may be filed by petition of at least fifty thousand (50,000) legal residents of the Member's district or State. Such a petition must be submitted to the chamber's

parliamentarian, who must submit it to the appropriate Panel. A Complaint may also be filed by a Local Delegate or another member of the same chamber.

It's great that there is a requirement that ethics complaints must be investigated. The obvious question is, who can file the complaint? Too low a bar, and there are endless complaints. Too high of one and this becomes form without substance.

First and foremost, the People matter. If 50,000 residents of a congressional district or State (in the case of a Senator) file a petition, that's enough to constitute a complaint. It's important to note that petitioners are not required to be citizens, only legal residents. This isn't about citizen sovereignty; it's about an ethical Congress. That affects everyone equally.

Next are the Local Delegates.[3] They, too, can file an ethics complaint. They are the elected officials closest to the citizens, and the Representatives have obligations to them. They have recourse if those obligations aren't met.

Finally, other members of the same chamber can file a complaint. These are the people most likely to observe unethical behavior. Notice that the complainant in these cases must be from the same chamber. A Senator can't file a complaint against a Representative and vice versa.

If it finds clear and convincing evidence of wrongdoing, the Panel must refer the complaint to the full chamber, with recommendations for action.

[3] *See* **National Charter of the United States** (unratified), Article II, Section 8.B. Local Delegates.

"Clear and convincing?" That's not a high bar, and it shouldn't be. Why not? Because the Panel doesn't decide guilt, and it doesn't impose punishment. All the Panel does is investigate and decide if there's enough to bring the allegations to the full chamber. The stakes are lower, so the bar is lower.

> Regardless of whether the Panel votes as a body to recommend action, the votes by Panel members must be part of the Congressional Record, as well.

This requirement keeps the Panel accountable. The details of the investigation may (or may not) be confidential, but each member's vote is recorded. If they vote against referral, they can always say, "I didn't think there was enough evidence to support it." But a vote on record means the question can be asked. The people will know they voted, and what the vote was.

That lets us (the citizens) watch the watchers.

***Article II, Section 2.A.4. Open and Accountable Votes***

> When recommendations for action are referred, the whole chamber will deliberate in open session and must make a final vote within forty-five (45) days. Voice votes or votes of acclamation are prohibited.

This simple clause does two things. It takes the decision to consider and vote out of leadership's hands. If the Ethics Panel refers a case, the entire chamber must debate and vote on it. It also forces individual accountability. No voice votes or acclamations. Every member's vote is recorded. No hiding.

**Article II, Section 2.B. Financial Anti-Corruption Standard**

> From the date of their initial swearing-in until two years after their final departure from Congress, the following rules apply to all Members of Congress.

Members of Congress aren't like everyone else. They have unique access to the financial system, the laws of our nation, and the regulatory framework governing business. They know about changes to the system well ahead of everyone else, and they can easily use that knowledge to make themselves rich.

To prevent that kind of corruption, the Charter has put guardrails in place. Members still own all of their financial assets, but they can't actively trade them. Not while they're in office, and not for two years after they leave. That's long enough to make their inside knowledge stale, but short enough not to be punitive.

***Article II, Section 2.B.1. Personal Bank Accounts***

> Members may maintain personal bank accounts under their direct control with a combined balance not exceeding their annual Congressional salary. If funds are transferred to a spouse, partner, or child living either in their official or primary residence, the spouse's or child's accounts are considered under the Member's control for this subclause.

This clause establishes a generous amount of spending money that Members of Congress can keep under their direct control. They can retain full control of up to their annual salary: far more than ordinary Americans have in the bank. The cap is high enough that no credible

argument can be made that the member can't meet the expenses of daily life. If this amount of checking and savings, on top of their continuing income, isn't enough to meet their everyday expenses, they need to rein in their lavish lifestyle. It really is that simple. Under this Charter, they earn a salary at the 90th percentile of U.S. earners, according to the most recent decennial census.[4]

The clause also includes a loophole closure. Transferring money to their spouse or a child living with them doesn't shield it. It's still their money. They know it, and we know it.

### *Article II, Section 2.B.2. Retirement Savings*

> Members may retain individual retirement accounts (IRAs) and other personal, tax-advantaged retirement instruments. Such accounts are exempt from the personal bank account balance limit, provided they consist solely of deposits, fixed-income instruments, or other assets not traded on public securities markets.

Some retirement accounts work like savings, but the money isn't normally accessible. This clause provides a carve-out for those limited-use accounts and defines precisely what they are. It's important to point out that most 401(k) and Thrift Savings Accounts are *not* part of this carve-out because they involve assets traded on public securities markets.

### *Article II, Section 2.B.3. Blind Trust Requirement*

> All other financial holdings, which can include, but are not limited to, publicly traded or privately held securities, business interests, and any real estate other than the

[4] *See* **National Charter of the United States** (unratified), Article II, Section 1.G. Compensation.

Member's primary residence in their home state or district, must be placed in a qualified blind trust administered by an independent fiduciary.

This provision allows ownership of securities and real estate, but it cuts off the Member's direct access to it. They can't trade it, and they can't liquidate it. The blind trust must be in the hands of a fiduciary, which means the person or entity managing the assets must do so with the Member's interests in mind. Still, the Member can't benefit from the results of that management until the exclusionary period ends, two years after they leave Congress for the last time.

The Member is prohibited from having direct control or knowledge of transactions within the trust during the covered period. Similarly, the fiduciary is prohibited from having knowledge of the Member's Congressional duties and briefings beyond what is in the public domain.

This section blocks any communication that could let the Member track, anticipate, or influence the trust's transactions. The reason is simple: if the Member knows what the trust is doing, they might shape legislation to benefit themselves. It also prevents the fiduciary from getting inside information about Congressional business.

The Member shall, upon establishing the trust, define the general investment direction and risk tolerance of any securities for the fiduciary. Additionally, they shall at that time make provisions for the management, purchase, or sale of real estate during their

service. The Member may, at their discretion, change those instructions once every two years, at the inception of a new

Congress. No other instructions may be issued to the fiduciary at any time for any reason outside of civil and family law matters overseen by and initiated in a court of law.

General investment direction shall consist of naming a general strategy for the portfolio, such as growth, stability, or income. It may not specify the markets, sectors, or behaviors required for any investment.

As I already noted, the trust is managed by a fiduciary. To fulfill their ethical and legal obligations, fiduciaries need guidance. This establishes how guidance may be provided and when. This is partly to protect the Member, but primarily to relieve the fiduciary from what would otherwise be an ethical and legal bind. Otherwise, the fiduciary relationship would be unworkable, and the blind trust scheme would fail, because no competent financial manager would take on the risk of such a trust.

In the event of the Member's death while assets are bound in the trust, control immediately and irrevocably transfers to the Member's primary beneficiary.

This final sentence is essential. The whole point of the blind trust is to ensure the ethical behavior of a Representative or Senator. If they die, that need ceases to exist, and there's no reason why their heir shouldn't assume immediate control of their assets.

***Article II, Section 2.B.4. Prohibited Trading***

> Members may not directly participate in any transactions involving securities or real estate involving non-exempt property during the covered period.

This subclause armor-plates subclause B.3, which precedes it. The blind trust isn't enough on its own. Just in case someone more clever than me (not a high bar, when it comes to finance) can figure out a way to execute a self-serving trade before transferring an asset to the trust, this subclause slams that door shut.

***Article II, Section 2.B.5. Disclosure***

> Beginning February 1 of each year, each Member must disclose to the Ethics Panel of their chamber a full accounting of all financial holdings and accounts under their direct control for review. Once begun, this disclosure must happen monthly on the first business day of the month for the remainder of the legislative year.

This final clause of Section 2 mandates much more frequent review of members' financial disclosures than the current system. Instead of an annual statement, the Member must file monthly reports with the Ethics Panel for review—no hiding in the fog of time.

There's an important point to note, though. It says "under their direct control." They don't have to report anything in the blind trust. That's intentional. It prevents a loophole

workaround that would defeat the blind trust's purpose. The Member of Congress in question can't say, "I need to see my statements so I can submit my report to the Ethics Panel."

And, since the Member can't trade or act on anything in the blind trust anyway, there's no need for the Ethics Panel to review any of it.

**Article II, Section 2.C. Permissible Sanctions for Ethics Violations**

> Either Chamber may, upon the recommendation of the Ethics Panel, choose to censure, fine, or expel a member of that Chamber for violations of the Congressional Code of Ethics.

So what happens if a chamber decides one of its members is dirty? This passage explicitly spells out the sanctions that can be imposed on that member. No vague hand-waving.

> The escalation pathway is censure, then fine, then expulsion. Sanctions need not start with censure; the Chamber may choose any level of sanction for a first offense.

Sometimes a member has a thick skull and commits ethical violations again. This explains how sanctions can become increasingly severe. It is also explicit that expulsion *can* be the first option.

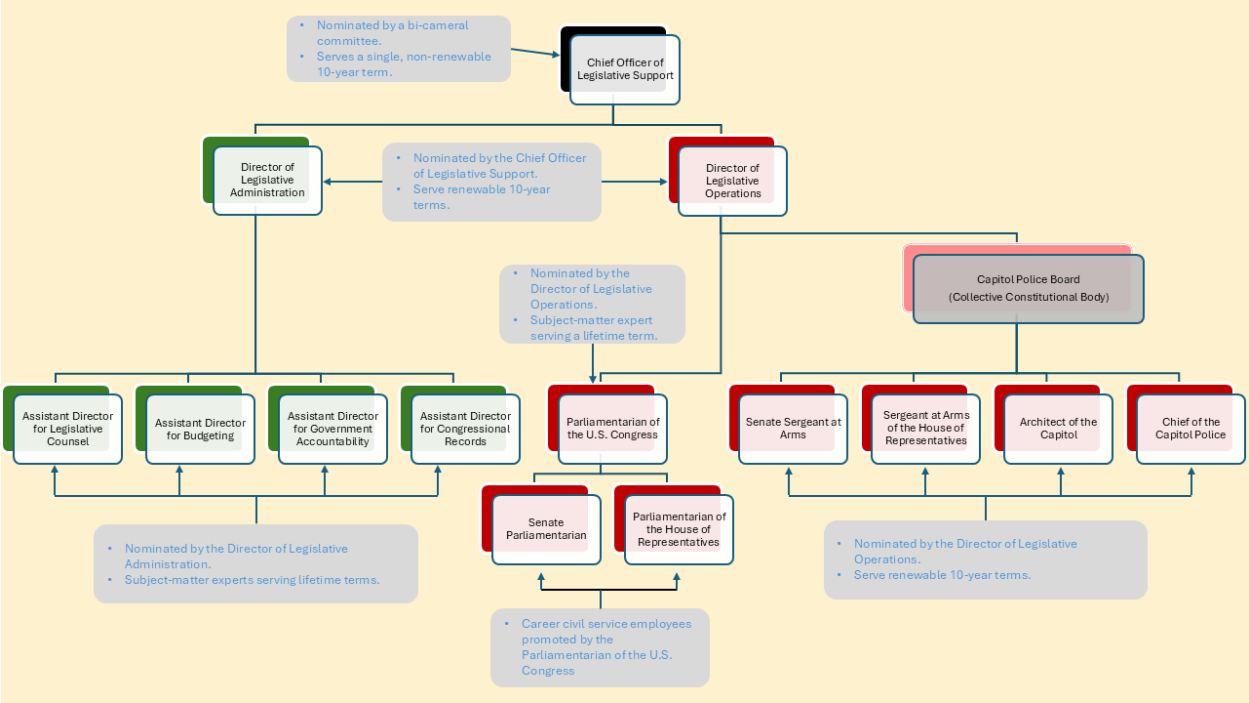
> No member, having faced a sanction, may be adjudicated the same or lesser sanction for subsequent violations of the Code of Ethics.

This locks it down. You got away with a stern talking to? Good for you. Screw up again, and you're either paying a fine or getting kicked out. Paid a fine last time? You're done.

No games. No endless warnings. No meaningless slaps on the wrist for multiple violations.

## Article II, Section 3 – Legislative Infrastructure

As you read through this section, you may find it helpful to refer to the diagram below.


Nominated by a bi-cameral committee.
Serves a single, non-renewable 10-year term.
Chief Officer of Legislative Support
Director of Legislative Administration
Nominated by the Chief Officer of Legislative Support.
Serve renewable 10-year terms.
Director of Legislative Operations
Nominated by the Director of Legislative Operations.
Subject-matter expert serving a lifetime term.
Capitol Police Board (Collective Constitutional Body)
Assistant Director for Legislative Counsel
Assistant Director for Budgeting
Assistant Director for Government Accountability
Assistant Director for Congressional Records
Parliamentarian of the U.S. Congress
Senate Sergeant at Arms
Sergeant at Arms of the House of Representatives
Architect of the Capitol
Chief of the Capitol Police
Nominated by the Director of Legislative Administration.
Subject-matter experts serving lifetime terms.
Senate Parliamentarian
Parliamentarian of the House of Representatives
Career civil service employees promoted by the Parliamentarian of the U.S. Congress
Nominated by the Director of Legislative Operations.
Serve renewable 10-year terms.

All legislative support offices and infrastructure shall belong to the Bureau of Legislative Support. This bureau shall be led by a Chief Officer of Legislative Support, who shall be nominated by a bi-cameral panel of five members of Congress: Two randomly selected from the House of Representatives, two randomly selected Senators, and either the Leader of the Senate or the Speaker of the House, the choice between them determined by a public coin toss.

The nominated candidate must be confirmed by a majority vote in both chambers. They can be removed only by a majority vote in both chambers. No official, elected or appointed, is vested with unilateral authority to dismiss them.

The Chief Officer of Legislative Support shall serve a single, non-renewable ten-year term.

Currently, there are a number of officials, agencies, and offices that report to or work for Congress. They are a hodge-podge, without coherent organization. They are all vulnerable, to varying degrees, to political interference. They are all vital, and they do essential work on behalf of Congress. But they need constitutional organization, roles, and limits.

This section of the Charter sets up that organization. First off, it establishes the Bureau of Legislative Support. It also establishes a politically appointed but independent individual to lead the Bureau, known as the Chief Officer of Legislative Support. The title is a snooze-fest. That's good. It should be. While transparency is vital, the work of the Bureau should be so uncontroversial and bland that everyday Americans are only barely aware of it.

This Section may feel very nitpicky, but the detail is important to preserve the function and independence of these support offices.

**Article II, Section 3.A. Administrative Division**

Within the Bureau of Legislative Support, there shall be an Administrative Division. This division shall encompass the Legislative Counsel Office, the Congressional Budget

Office (CBO), the Government Accountability Office (GAO), the Congressional Records Office (CRO), and additional administrative offices, limited to legislative administrative support, as established by Congress.

As I noted earlier, one major problem with the current support structure for Congress is a lack of clear organization. This Charter sets up two divisions within the Bureau of Legislative Support. This is the first: the Administrative Division. The language here establishes the Division and enumerates the offices within it, leaving room for Congress to add others, provided they are limited in scope to some form of administrative support for Congress. In other words, it defines the initial scope and preserves flexibility without allowing Congress to establish quasi-executive agencies within the legislative branch.

The Administrative Division shall be led by a Director of Legislative Administration, nominated by the Chief Officer of Legislative Support. The nominated candidate must be confirmed by, and is removable only by, a three-fifths (3/5) vote in both chambers. No official, elected or appointed, is vested with unilateral authority to dismiss them. Alternatively, when impeachable behavior is present, they may be removed via the impeachment process.

The Director of Legislative Administration shall serve a renewable ten-year term beginning upon their confirmation. Term renewal is subject to the same nomination and confirmation requirements as the initial term.

These two clauses explain who leads the Administrative Division, how they are selected, how they may be removed, and how long they serve.

There are a couple of points worth highlighting. First, they are independent; even their boss (the Chief Officer of Legislative Support) can't just fire them at will. Dismissal requires a supermajority in both chambers, just as their confirmation did. This will be a recurring theme for legislative appointees. The idea is to make it hard but not impossible to dismiss them, so that they can act independently. Their offices sometimes have to speak uncomfortable truths to Congress, and they need to do so without fearing for their jobs.

Alternatively, they can be removed from office if they are impeached in the House of Representatives and convicted in the Senate, but the grounds for impeachment are narrow and specific.[1]

The second point is their term of office. The Director serves a ten-year term, which is lengthy. That term can even be renewed, but only with a full re-nomination and re-confirmation. This is the flip side of the role's independence. They can act independently,

[1] *See* **National Charter of the United States** (unratified), Article II, Section 5.F.3. Impeachment Procedures.

but they will need to convince Congress to re-nominate and reconfirm them for any additional terms.

> Each office within the Administrative Division shall be led by an Assistant Director, as provided for in the sub-clause describing the Office they lead. The Director of Legislative Administration shall appoint Assistant Directors within the Administrative Division. A nominated candidate must be confirmed by and may only be removed by a three-fifths (3/5) majority vote in both chambers. No official, elected or appointed, is vested with unilateral authority to dismiss them.
>
> As with all officials, an Assistant Director may also be removed via the impeachment process when behavior warrants.
>
> Assistant Directors are experts in the operations of their offices and must be independent of political influence. Therefore, they serve lifetime appointments unless removed as prescribed in this Charter. They report to the Director of Legislative Administration.

These clauses explain the leadership of the offices within the Administrative Division. Notice that nomination, confirmation, and dismissal are very similar (although they are nominated by the Director, rather than the Chief Officer of Legislative Support).

These officials serve until they resign, retire, or are removed from office. Why? Because they are closer to the experts in the offices they lead. Their institutional knowledge is

useful and vital to retain, if possible. Still, they aren't above oversight, and they can be removed if there's enough will in Congress.

***Article II, Section 3.A.1. Legislative Counsel Office***

> Within the Administrative Division, Congress must maintain an office of experts in legislative drafting and statutory interpretation. It will prepare bills, amendments, and legal opinions upon request from any Member, Ethics Panel, or Committee. Alternatively, the office may review proposed legislation written by third parties, looking for unexpected or potentially buried provisions, unintended consequences, and other legal pitfalls in the draft language.
>
> The Legislative Counsel Office shall be led by the Assistant Director for Legislative Counsel.

This office might seem like boilerplate. That's because it is. That doesn't make it any less essential.

The heart of its purpose is this question: "If I write law *x*, how will it actually be interpreted by courts?" The Legislative Counsel's Office can ask, "What are the potential unintended consequences, and what are the legal pitfalls that might cause the law to get struck down partially or in full?"

A huge chunk of legislation is currently written by third parties and handed to Congress in "legislative language." In an ideal world, that practice would stop. But we don't live in a perfect world, so it will likely continue. At least this gives all sides a neutral place to go

when they need help understanding the potential fallout of a bill. Poorly written laws are dangerous. A non-partisan office makes it harder for sloppy drafting to trample people's rights.

The office will also help Congress draft laws in plain language, as required by this Charter.[2]

***Article II, Section 3.A.2. Congressional Budget Office (CBO)***

> Within the Administrative Division, Congress must maintain a Congressional Budget Office (CBO). It shall provide independent, nonpartisan cost estimates, revenue projections, and budgetary analyses. All CBO reports and data shall be published in full and publicly available, with no external review or amendment by any member of Congress or appointee outside the CBO prior to release.
>
> The Congressional Budget Office shall be led by the Assistant Director for Budgeting.

The Congressional Budget Office is responsible for the truth. It isn't answerable to a party, congressional leadership, or a majority. That's why the requirement that their reports and data are released without amendment or external review isn't pretty rhetoric; it's purposeful. Nobody in Congress gets to massage the numbers and bury the facts before the American people get a look at them.

[2] *See* **National Charter of the United States** (unratified), Article II, Section 4.A.2. General Legislation.

It's also important to note that Congress will rely on CBO estimates when drafting the budget.[3] The balanced budget provisions depend on this office's independence.

### *Article II, Section 3.A.3. Government Accountability Office (GAO)*

> Within the Administrative Division, Congress must maintain a Government Accountability Office (GAO). This office shall assist Congress by conducting audits and investigating the procedures and operations of government agencies and shall report its findings directly to Congress. It shall have no enforcement power of its own. All reports and audits shall be published in full and publicly available, with no external review or amendment by any member of Congress or appointee outside the GAO prior to release.
>
> The Government Accountability Office shall be led by the Assistant Director for Government Accountability.

This is Congress's watchdog. The Government Accountability Office can audit government agencies, investigate their processes, and carry out other functions to help Congress in its oversight duties. They don't have enforcement power, and they are not beholden to any individual *Member* of Congress. Instead, they help Congress make government better and more efficient.

[3] *See* **National Charter of the United States** (unratified), Article II, Section 4.C.1. Balanced Budgets and Deficit Spending.

Just like the CBO, the GAO's reports and audit results have to be published free of political interference. This helps ensure good government. Nothing more, nothing less.

If the CBO looks to the future, the GAO keeps its eye on the present and recent past.

***Article II, Section 3.A.4. Congressional Records Office (CRO)***

> Within the Administrative Division, Congress must maintain a Congressional Records Office, which shall encompass the offices of the Secretary of the Senate and the Clerk of the House of Representatives.
>
> The Congressional Records Office shall be led by the Assistant Director for Congressional Records.
>
> The Secretary of the Senate and the Clerk of the House of Representatives are civil servants promoted by the Assistant Director for Congressional Records from within the ranks of the CRO. Their promotion, employment, and termination are otherwise subject to the usual laws and regulations governing all other employees of the Federal Government.

In any kind of government that relies on a legislature to represent the people or constituent states (ours does both), it's of utmost importance that the votes, procedural moves, legislative minutes, and more all be documented and available for review. But who handles that? This clause establishes the Congressional Records Office, and its suboffices in each chamber of Congress, to see to exactly that set of tasks. It isn't glamorous, but the CRO is

the disinfectant of Congress. By maintaining the records for posterity, it ensures that nothing is hidden from sight, where it can rot away at the core of our Republic.

**Article II, Section 3.B. Operations Division**

> Within the Bureau of Legislative Support, there shall be an Operations Division. This division shall encompass the Parliamentarian's Office, the Capitol Police Board, and the Offices under their control. Congress shall have the power to add offices to the Operations Division, provided their function is limited to:
>
> - Enforcement of chamber rules, or
> - Order, security, and maintenance of the Capitol and its ancillary facilities.

This is the second part of organizing the vital offices and agencies of the legislative branch. This language sets up the second division of the Bureau of Legislative Support: the Operations Division. The Administrative Division handles records, reporting, drafting support, and so on. The Operations Division handles security, compliance with each chamber's rules, and the maintenance and operation of the Capitol's physical space. As it did with the Administrative Division, the Charter gives Congress latitude to add to the Division if necessary, but insists that additions be appropriate in scope.

> The Operations Division shall be led by a Director of Legislative Operations, who shall be appointed by the Chief Officer of Legislative Support. The nominated candidate must be confirmed by and is only removable by a three-fifths (3/5) vote in both

chambers. No official, elected or appointed, is vested with unilateral authority to dismiss them.

The Director of Legislative Operations shall serve a renewable ten-year term beginning upon their confirmation. Term renewal is subject to the same requirements of nomination and confirmation as an initial term.

This is an exact analog to the leadership section for the Administrative Division in Subsection A[4]. The reasoning and logic are the same, so I won't belabor them here.

***Article II, Section 3.B.1. Parliamentarian's Office***

Congress must maintain an office of experts in Parliamentary Rules and Procedure. The office shall track the history of the Rules of each Chamber and shall enforce compliance with the Rules in force at any given time.

Each Chamber writes its own rules of order. But who records and enforces them? The Parliamentarian's Office is responsible for those duties. They ensure the history of chamber rules is preserved, and the Chamber Parliamentarians are the arbiters of whether the rules in force at any given time are being followed. Essentially, these are the referees of Congress.

The Parliamentarian's Office shall be led by a Parliamentarian of the United States Congress. This individual shall be appointed by the Director of Legislative Operations and shall report directly to them. The nominated candidate must be confirmed by and

[4] *See* **National Charter of the United States** (unratified), Article II, Section 3.A. Administrative Division.

is only removable by a three-fifths (3/5) vote in both chambers. No official, elected or appointed, is vested with unilateral authority to dismiss them.

The Parliamentarian is a subject-matter expert in Congressional parliamentary procedure. For this reason, they serve a lifetime appointment unless removed as prescribed in this Charter.

These two sub-clauses explain the Parliamentarian's appointment and term of office. The criteria are similar to those for Assistant Directors in the Administrative Division.

The Parliamentarian of the United States Congress shall promote one individual for each Chamber of Congress from within the ranks of the civil service in the Parliamentarian's Office to serve as the Chamber Parliamentarian for their respective Chamber (*i.e.*, a Senate Parliamentarian and a Parliamentarian of the House of Representatives). The promotion, employment, and termination of the Chamber Parliamentarians are otherwise subject to the usual laws and regulations governing all other employees of the Federal Government.

Each chamber of Congress has its own Chamber Parliamentarian who oversees the other members of the office in that Chamber. They also serve as the arbiter of that Chamber's rules.[5] Under our current system, these office holders are political appointees, but under

5 *See* **National Charter of the United States** (unratified), Article II, Article II, Section 1.C.3. Chamber Rules of Procedure.

this Charter, they are professional civil servants. Why? Because professional civil servants have a deep knowledge of the institution and its mechanics. That's exactly the kind of knowledge required for the role.

***Article II, Section 3.B.2. Capitol Police Board***

> Within the Operations Division, Congress must maintain a Capitol Police Board. This Board shall have as members the Architect of the Capitol, the Sergeants at Arms of each Chamber of Congress, and the Chief of the Capitol Police. All four members are full, voting members.

This structure is very close to the current structure, but with two important differences. First, the Capitol Police Board currently reports to Congress, but under this Charter, it reports as a whole to the Director of Legislative Operations.

The other difference, and it is a major one, is that the current Chief of the Capitol Police is a member of the Board but doesn't have a vote and is subordinate to it. Under this Charter, however, the Chief becomes an equal member of the Board and is subordinate to the Director, just like the other Board members.

> As a body, the Capitol Police Board is responsible for security, maintenance, and emergency contingency plans for the Capitol building and its ancillary facilities.

This establishes the exact scope of the Board. This is what it does. Notice that its operation is confined to the Capitol and ancillary facilities (like the Senate Office Building, for example).

The Capitol Police Board, as a body, is collectively accountable to the Director of Legislative Operations. Its constituent members, acting as heads of their offices, are also individually accountable to the Director of Legislative Operations.

This may bring you up short, briefly. Why two separate lines of authority – one for the Board and separate ones for each member individually?

The answer is scope. The Board's scope is narrowly defined in the preceding sentence. On those matters, the Board collectively answers to the Director. That's pretty straightforward.

But what about personnel decisions for the Architect's Office? Should we need to convene the board to approve hiring a couple of new master electricians?

And what about emergencies? Should the Chief of the Capitol Police need to convene the Board before ordering the Capitol Police into action?

The answer to both extremes is obviously no.

Each is nominated by the Director of Legislative Operations. Each nominated candidate must be confirmed by and is only removable by a three-fifths (3/5) vote in both chambers. No official, elected or appointed, is vested with unilateral authority to dismiss them.

Members of the Capitol Police Board each serve a renewable ten-year term. Renewal requires the same appointment and confirmation process as the initial term.

The appointment process here is consistent with the other parts of the Bureau of Legislative Support. Their terms are renewable but are subject to full renomination and reappointment.

Article II, Section 3.B.2(a). Office of the Architect of the Capitol

Congress must maintain the Office of the Architect of the Capitol. Its daily operations shall be directed and overseen by the Architect of the Capitol. This office shall be responsible for all matters concerning the management and upkeep of the Capitol and its ancillary facilities (such as secondary congressional office buildings).

This sub-clause outlines the duties and function of the Architect of the Capitol. The title is an artifact from history, but it is still in use. There's no compelling reason to change the title, so this Charter preserves it. Unfortunately, the title obscures the function of the office. This sub-clause clears it up.

Article II, Section 3.B.2(b). Capitol Police

Congress must maintain the Capitol Police. Its daily operations shall be directed and overseen by the Chief of the Capitol Police. The Capitol Police have primary law enforcement jurisdiction for the Capitol and its ancillary facilities. They may detain or arrest individuals subject to the restrictions on law enforcement outlined in this

Charter. They also have authority to investigate crimes committed on Capitol grounds, with discretion to delegate that authority to Executive Branch law enforcement.

Like with the other offices, this is not a new office. This sub-clause, like the others in the Operations Division, enshrines it in the Charter. The scope is clear: they are cops, and they do cop things. If it makes sense, they can ask other cops to do some of those cop things. That may seem like a flip explanation of the Capitol Police (it kind of is), but it's also an accurate one.

Really, the major point to note is that their jurisdiction is the Capitol and its ancillary facilities. They don't have jurisdiction in the rest of Washington D.C., or anywhere else, for that matter.

Article II, Section 3.B.2(c). The Sergeants at Arms of the Senate and the House of Representatives

Congress must maintain offices and staff for the Sergeant at Arms of the Senate and the Sergeant at Arms of the House of Representatives. Each of the two Sergeants at Arms shall direct and oversee the daily operations of their offices and staff.

The Sergeants at Arms are responsible for security and ceremonial functions within their respective Chambers. They each shall command a detachment of Capitol Police whose duties are restricted to ensuring the physical security of the Chamber and the Members and staff related to that Chamber.

> Additionally, at the direction of a Committee Chair properly authorized by their Committee, the Sergeants at Arms must issue warrants of arrest to the Chief of the Capitol Police for the apprehension of individuals in Contempt of Congress. If such a warrant is executed, the arrested individual is remanded to the Executive Branch, which must prosecute the charge of Contempt of Congress vigorously, regardless of the individual involved.

These two paragraphs explain the core functions of their offices within the legislative branch. Mostly, they are responsible for security within their chambers.

They are also the connective tissue between committee chairs and the Chief of the Capitol Police when a congressional committee has grounds to arrest an individual for contempt of Congress. This is important because it allows Congress to act without relying on either the executive or judicial branches for Contempt of Congress arrests.

The other important feature, and one that's absent in the system currently in use, is that such an arrest compels the executive branch to prosecute "regardless of the individual involved." If it's the Attorney General, so be it. They must be prosecuted.

## Article II, Section 4 – The Powers of Congress

> A majority of duly sworn and elected Members of a given Chamber must be present or capable of participation in debate and vote under the Rules of that Chamber in order to carry out any business in that Chamber. For the purposes of this Charter, this is the definition of a Quorum, except for the emergency modifications permitted under subsection 4.G of this Article.
>
> Except for the single exception enumerated in Article II, Section 4.G.2, physical presence in the Capitol must always be considered as presence and the capability to participate. Additionally, any other condition of participation or physical location must apply equally to every Member of the Chamber.

Section 4 opens by defining a quorum. This is a dry procedure, and dry procedures are where democratic systems thrive or die. This definition of a quorum requires two things:

1. Physical presence in the Capitol building is all that is required for a member to be considered capable of participation, and
2. Any other chamber rules have to define capability in the same way for every Member of the chamber in question.

What's this all about? I am writing this in the 2020s. It's possible that a Chamber may want to elect for a chamber rule that allows a Member to participate in debate via remote conferencing, or to vote from their office, rather than from the floor. That's fine, but any

rules surrounding what constitutes a quorum under those circumstances have to put every Member on equal footing.

Regardless of any rules, physical presence in the Capitol is sufficient to permit participation. Say, for example, Senator Zippy is in the Capitol, but the Senate Leader has decided, under the rules, that the debate on a given bill is to be conducted remotely. Senator Zippy doesn't have to trot back to their office in the Hart Senate Office Building. They are in the Capitol, so they can participate. Full stop.

> Five days of unexcused absence from Congress, when such absence causes or contributes to a lack of Quorum, and when such absence could be reasonably avoided, shall result in immediate loss of Office upon one-half ($^{1}/_{2}$) plus one of Members present so assenting. Such a vote must be held for all absent Members as a bloc.

What happens when Members intentionally refuse to be present (or capable) in order to prevent quorum? This isn't as inherently implausible as it may seem. Though not at the national level, we have seen this done at the state level throughout history. My home state of Texas is a prime example of this. It has been done here in 1870, 1979, 2003, 2021, and 2025.

Regardless of whether you agree or disagree with the reasons *behind* these walkouts, the notion that a minority can deny a majority in this way is inherently in conflict with who we say we are as a people.

This passage renders these walkouts dangerous if sustained. Participants risk the loss of their offices, not through impeachment or an ethics complaint, but by a simple vote of those who showed up for work.

There's protection in place for those Members even here, though. First, the absence must be reasonably avoidable. Second, there is a single vote for *all* absentees. The vote can't be used as a scalpel, only a cudgel. All or none. That's the standard. But if a majority votes to expel those Members as a bloc, they are expelled. That immediately restores quorum under the definition set forth here.

> When a Quorum is present, Congress may exercise the various Powers delegated to it in this Section by the Citizens.

This sentence operationalizes a quorum. That's it. Congress can't use their delegated powers until there is a constitutional quorum.

So why make a big deal about quorum? Right now, quorum rules exist under the Constitution of 1789.[1] It says that a majority constitutes a quorum to do business. A majority of what? Where? What is "doing business?" Those seem like silly questions. But so do a lot of the other questions we're being forced to address in this revision of our government. A clever actor could certainly exploit the vague definition if they chose to do so. Hell, I'm not that clever, and *I* could probably figure something out.

[1] *See* **Constitution of 1789,** Article I, Section 5, Clause 1: "...a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day...."

The framers of the 1789 Constitution preferred loose language to preserve flexibility. It was a deliberate design choice. And it works, until it doesn't. They should have considered the collapse of the Roman Republic, which was governed by customs and traditions as much as by law. That's very much the same as today's "norms." The fact that this hasn't failed at the federal level is a happy accident of history, not a consequence of good design.

**Article II, Section 4.A. Legislation**

***Article II, Section 4.A.1. Legislative Process***

> Except as otherwise constrained in this Charter, either Chamber may introduce a Bill for consideration. Passage of a Bill in either Chamber shall require a simple majority of votes cast to be in assent.
>
> A Bill, having been passed in one Chamber, shall be submitted to the other Chamber for consideration, revision, and amendment.

There is zero new information here. It's just explicitly stated in constitutional law.

> Upon a Bill passing the second Chamber, both Chambers must meet in open joint session and debate the Reconciliation of both Chambers' versions of the Bill, and ratify the final Bill. The Senate Leader shall preside over the joint session, but the procedural rules of the House of Representatives shall prevail. Voice votes or acclamation are permitted for amendments and procedural questions; however, passage of the whole Bill requires individual, recorded votes of assent, dissent, or abstention.

This, on the other hand, is entirely new.

Under current rules, once a bill has passed both houses of Congress, a reconciliation committee meets to harmonize the two versions of the bill. It then goes back to *each chamber* for a vote.

This Charter rejects that structure in favor of open reconciliation by a joint session of Congress.

Why?

Two reasons. The first is practical. While a committee is easier to manage, no negotiation that excludes stakeholders is likely to satisfy. That's just basic human nature.

The second is political. A committee is easier to manage, but also easier to manipulate. And reconciliation is not usually negotiated in the open. Provisions creep in, negotiated in back rooms, that often Members miss while reading the reconciled bill before voting. This isn't hypothetical.

One example is the Commodity Futures Modernization Act (CFMA), which was enacted in December 2000. It was slipped into an omnibus appropriations bill in the conference committee. It received little floor debate. It exempted over-the-counter derivatives (including credit default swaps, which would heavily contribute to the 2008 financial crisis) from oversight by the Securities and Exchange Commission (SEC) as well as by the less commonly known Commodity Futures Trading Commission (CFTC). Had that oversight been in place, we potentially could have avoided the Great Recession.

Forcing reconciliation into an open joint session will slow it down considerably. That is a necessary trade-off. The benefit, which outweighs the cost by an order of magnitude, is that individual Members see and hear the debate on each individual amendment, revision, and redaction. Nothing slips by.

This isn't a solution in search of a problem. It's a robust response to a dire need.

> Any Bill receiving a majority of votes cast in assent shall be considered passed and must be transmitted to the President for signature, remand, or veto.

And the final step.

Send the passed bill to the President, who can veto it, remand it back to Congress, or sign it.[2]

***Article II, Section 4.A.2. General Legislation***

> Congress may enact necessary and proper laws to fulfill the general federal legislative duties required by the People and this Charter, provided such laws do not infringe the Rights of the People or exceed the limits of Constitutional delegation. Similarly, no law may infringe on the Rights and duties of the States and Tribes as outlined under Article V.

[2] *See* **National Charter of the United States** (unratified), Article III, Section 2.A.5. Veto and Remand.

This clause has some nuance that you won't find in the Constitution of 1789. The Framers were suspicious of the people and of a strong central government – but they wrote in broad principles.

That approach gives flexibility. That flexibility has been its strength and Achilles' Heel. They didn't put a lot of restrictions on Congress, and over time, it has passed plenty of laws the Founders likely wouldn't have approved of.

The language here is more careful. It delegates legislative power to Congress, but specifies why. Congress has the power to write law, yes, but only to fulfill the duties required by the people and the Charter. There's no broader delegation.

In fact, it places some crucial limits. Congress can't make laws that infringe rights. On that note, note that the clause says "of the People." It isn't only citizens who are protected from Congressional overreach – it's all of the people.

Congress can't exceed the powers delegated to it in the Charter, and it can't infringe on the rights and duties of the States or Tribes.

So, under this framework, Congress could enact laws that help shore up property rights, or laws that preserve or enhance an individual's freedom of expression. They can enact the federal budget. They can establish the Postal Service. But they can't mandate that the states develop their own, local postal services. That would exceed their authority. Congress could, in the interest of preserving bodily autonomy, enact healthcare legislation, but it couldn't force the states to do it. Congress couldn't make a law requiring anyone to say aloud what their beliefs are (silence is a protected form of expression).

Any bill or law that results from a bill must meet the following requirements:

- It must be written in plain language, generally understandable by an adult, fluent in the English language, with an ordinary level of education, but not necessarily legal training.
- Any technical terms must be defined in an easy-to-find and identified glossary in the text of the bill. Any such definitions shall be the operative legal definitions.
- The first Section of the bill or law must include a written explanation detailing why the bill was introduced and how it serves the larger purpose of the government in securing the Rights of the People.

Laws enacted before ratification of this Charter are exempt from these requirements.

This passage provides specific elements that Congress must include in any bill it passes.

The first one is vital. The people deserve to understand the laws they are governed by. A critic might say, "Legal language has to be complex to be precise." To them, I say: this entire Charter was written in plain language. This commentary is plainer still. It *can* be done, and the people have a right to expect that it *will* be done.

Sometimes, even with the greatest effort to maintain plain language, a technical term has to be used. In those instances, this passage also mandates an easily identified glossary of terms in every bill. The reason for this is the same as the reason for the first requirement. People have a right to understand the laws that govern them.

Every bill has to begin with a written explanation – what it's for and how it advances the rights-first mission of this Charter. A bill on airport security can explain that it is designed to protect the life and bodily autonomy of travelers while preserving and respecting their right to privacy.

There is an exception for laws that are already on the books at the time of ratification of this Charter. That's necessary. Without that exception the plain-language rule alone would probably invalidate every law in the U.S. Code.

> Failure of Congress to meet the requirements outlined here renders the bill unable to be presented to the President for signature, remand, or veto. Any such failure must be remedied before a bill can advance to law.

This is straightforward. If a bill doesn't meet the requirements, it can't be sent to the President. Only after the shortcoming is addressed can it advance.

> In any case where a Federal Appellate Court finds that these requirements were not met, the Court in question is obligated to remand the law to Congress for remedy and resubmission to the Court within thirty (30) days. Failure on the part of Congress to submit a remedied bill to the Court's satisfaction requires the Court to strike down the law as unconstitutional, without regard for severability or other considerations.

It is a near certainty that bills will pass into law that don't meet the requirements of this clause. That may be due to differing interpretations of the Charter language, nefarious intent (unlikely, but possible), or early on, simple unfamiliarity with the new requirements. Whatever the reason, if such a law is challenged in court, the judge has no choice. The path

is fixed by the Charter. That judge must remand the law back to Congress for remedy. Congress can act on that remand or not, at its discretion. Either way, if the bill isn't returned to the court with remedies the court is satisfied with, the law is unconstitutional and must be struck down in its entirety.

This is highly unusual. Usually, when a law is struck, the court looks for the smallest chunk of it that can be struck (or "severed"). The problem here is that failing to meet the requirements in this clause affects the entire law. There is nothing severable. The lack of compliance taints the entire text. That's why the whole law must be struck down. Nothing prevents Congress from having a do-over, but it would have been simpler to just act on the remand.

***Article II, Section 4.A.3 Material Interstate Legislation***

> Congress shall have the authority to legislate on matters that materially and necessarily concern coordination or relations among two or more States, but only when such legislation is essential to resolve a demonstrable jurisdictional conflict, ensure the uniform application of Civil or Natural Rights across State boundaries, or provide a framework for lawful intergovernmental cooperation.
>
> This authority shall not extend to matters that States can resolve independently, nor to those that merely affect multiple States without requiring federal involvement.

One of the big problems with the Articles of Confederation was that there was no way to regulate interstate conflicts, especially economic and military matters. The trade problems between states were significant enough that they led to a call for the Annapolis Convention.

That convention was only attended by delegates from five of the thirteen states, but delegates called for a broader convention to revise the Articles, which led to the Philadelphia Convention (also known as the Constitutional Convention of 1787).

That's why the framers of the Constitution of 1789 included the language giving Congress power "To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."[3] This has been dubbed the "Interstate Commerce Clause," or sometimes simply the "Commerce Clause." It was intended to help with coordinating trade between political entities.

There was no meaningful history for the clause from 1781 until 1824. That year, the Supreme Court ruled on *Gibbons v. Ogden* (1824),[4] providing the first judicial interpretation of the clause. The court defined commerce to include all commercial activity, not just buying and selling. It found that "among the several states" meant commerce affecting more than one state. And it found that states can't burden interstate commerce simply because Congress hasn't acted. In the ensuing forty years, two cases narrowed that scope: *Willson v. Black Bird Creek Marsh Co.* (1829)[5], and *Cooley v. Board of Wardens* (1851).[6] These two cases returned some regulatory power to the states.

A crisis erupted in the 1930's. The Great Depression was in full swing, and the New Deal brought sweeping new federal programs. Under the existing legal doctrines, the Interstate Commerce Clause was interpreted narrowly. In *Schechter Poultry Corp., v. United States*

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[3] **Constitution of 1789,** Article I, Section 8, Clause 3.
[4] *Gibbons v. Ogden*, **Volume 22, United States Reports,** opinion begins at page 1 (1824).
[5] *Willson v. Black Bird Creek Marsh Co.,* **Volume 27, United States Reports,** opinion begins at page 245 (1829).
[6] *Cooley v. Board of Wardens,* **Volume 53, United States Reports,** opinion begins at page 299 (1851).

(1935),[7] the Supreme Court found the National Industrial Recovery Act was unconstitutional by giving the President overly broad power without clear standards from Congress. The following year, in the *Carter v. Carter Coal* (1936)[8] case, the court ruled that the congressional power to regulate under the Commerce Clause didn't include control of the conditions of producing it before it became a commodity.

The Roosevelt Administration didn't throw in the towel. They pushed back and continued their New Deal programs. In *NLRB v. Jones & Laughlin Steel* (1937),[9] the court upheld federal labor regulation of manufacturing, and in *United States v. Darby* (1941),[10] it overturned earlier precedents, allowing the federal minimum wage.

In *Wickard v. Filburn* (1942),[11] the Court established the "aggregation principle," which allows Congress to regulate even purely local activities if their aggregate effect substantially affects interstate commerce, even if the individual instances don't. Most economic activity aggregates that way, so this effectively opened the door for Congress to regulate almost anything.

I'll concede that it allowed for some very beneficial changes in American law – the Civil Rights Act of 1964, environmental regulations, and workplace safety standards, among them. I won't argue that the Civil Rights Act was bad law. I'm in favor of a healthy environment and a safe workplace. I think it's important that Congress can legislate on

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[7] *A.L.A. Schechter Poultry Corp. v. United States*, **Volume 295, United States Reports,** opinion begins at page 495 (1935).
[8] *Carter v. Carter Coal Co.,* **Volume 298, United States Reports,** opinion begins at page 238 (1936).
[9] *NLRB v. Jones & Laughlin Steel Corp.,* **Volume 301, United States Reports,** opinion begins at page 1 (1937).
[10] *United States v. Darby*, **Volume 312, United States Reports,** opinion begins at page 100 (1941).
[11] *Wickard v. Filburn,* **Volume 317, United States Reports,** opinion begins at page 111 (1942).

those matters. Article II, Section 4.A.1 of this Charter grants *exactly* that kind of legislative authority to Congress.

What I will argue, though, is that stretching the apparent intent of the Commerce Clause in the way that it has been done is dangerous. There is now a loaded shotgun in the hands of Congress that can be used to legislate on *almost* any economic subject. That's not a great idea.

This clause restores some boundaries to *interstate* regulation. Congress can still do it, that's explicitly allowed. What it can't do is act broadly. It has to show a demonstrable need – one that can't be resolved another way.

**Article II, Section 4.B. Taxation**

In the United States, Congress holds the "power of the purse." Typically, when we discuss that power, it is the power to *spend* money. But there has to *be* money *in* the purse. So, there is another side to that power: the power to raise revenue. Congress has the power to impose taxes. This subsection addresses that power and its limits.

***Article II, Section 4.B.1. Congressional Authority***

> Congress has the sole power to levy, suspend, or repeal taxes, duties, tariffs, and excises. This power is non-delegable.

There is a lot packed into this single sentence.

"Sole power." That means only Congress – not the President, not the Department of State, not anyone else.

"Levy, suspend, or repeal." Those three words pretty much run the whole gamut, don't they? Presidents have not only imposed tariffs but also suspended or repealed them. The Charter's language is unambiguous – only Congress can do any of the three.

"Taxes, duties, tariffs, and excises." This also covers a pretty broad spectrum. In short, it's intended to cover all of the meaningful revenue streams for the U.S. government.

"Non-delegable." Congress can't delegate this Power to anyone else. That doesn't mean it can't, unless it meets the "political question" test[12]. It doesn't ask if Congress established an "intelligible principle."[13] It means Congress can't delegate it at all.

Some will object. "This strips the President of the ability to negotiate trade!" But that's not true. It strips the President of the ability to unilaterally decide what foreign taxes apply or don't on their own say-so.

That power doesn't belong to the President under the Constitution of 1789. The founders didn't intend the President to have that ability. Article I, Section 8 gives Congress the power to tax, but Article II does not confer similar power on the Executive Branch. In Federalist No. 31, Hamilton, arguing in favor of congressional taxing power, says, "A government ought to contain in itself every power requisite to the full accomplishment of the objects committed to its care, and to the complete execution of the trusts for which it is responsible, free from every other control but a regard to the public good and to the sense

[12] The "political question doctrine" applies in several ways to constitutional interpretation under the Constitution of 1789. With respect to delegability, it establishes certain things that *can't* be delegated to another branch, because they rely on the originating branch's political judgment. Here, the Charter denies delegability of taxation authority across the board, rendering the political question doctrine moot.

[13] "Intelligible principle" doctrine is the idea that Congress can authorize the Executive to implement laws as long as it provides a clear policy, purpose, or standard to guide the Executive's discretion. The Charter also denies this principle for taxation, including tariffs, by flatly denying delegability.

of the people."[14] I ask you to note that he doesn't state that one of the controls is the Executive Branch, and his broader argument in the article concerns Congress's power to impose taxes.

The President's current powers in this realm come from delegation through *statute*. There are well over a dozen statutes that gradually expanded the President's authority to impose or reduce tariffs for a variety of reasons. The McKinley Tariff Act of 1890[15] and the Trade Expansion Act of 1962[16] are two of more than a dozen acts that gradually delegated this power to the President. None of these were derived from the Constitution of 1789; they were *all* delegated to the President by Congress.

If Congress has delegated this power so many times, why not preserve that delegation? All those generations of legislators must have had their reasons for passing that authority on to the President, right? Maybe. What those reasons were, I won't speculate, but humans generally act with purpose. It's a little-known fact that Members of Congress are, in fact, humans. That doesn't change a fundamental point: the power of the purse is one of the strongest authorities Congress holds. On that basis alone, it shouldn't be delegated. More importantly, taxes—any kind of taxes—can have severe consequences for the economy. Therefore, they can have severe consequences for individuals' property rights. No single person should have the power to wield that much power.

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[14] **The Federalist, Number 31,** Alexander Hamilton (1788).
[15] **McKinley Tariff Act of 1890**, Chapter 1244, Published in **Volume 26, United States Statutes at Large,** beginning at page 567. This reflects the law as originally enacted by Congress before any portions were later reorganized or codified into the United States Code.
16 **Trade Expansion Act of 1962**, Public Law No. 87-794, **Volume 76, United States Statutes at Large,** beginning at page 872. This reflects the law as originally enacted by Congress before any portions were later reorganized or codified into the United States Code.

"What about foreign sanctions designed to help achieve foreign policy goals?" This doesn't affect foreign sanctions. They aren't taxes. There are penalties for bad actors. Embargoes and similar instruments aren't covered by this provision. And, in general, they don't involve payments because collecting payments from hostile governments would be virtually impossible. So, logically, those aren't taxes. To the extent that sanctions collect revenue, they constitute a seizure, not a tax.

### *Article II, Section 4.B.2. Procedural Requirements*

> All bills involving taxation must be stand-alone bills and must originate in the House of Representatives. No bill may contain both taxation provisions and non-taxation provisions.

Everyone knows that taxation has to originate in the House. That was in the Constitution of 1789,[17] and it is true in this Charter, as well.

But why?

The House of Representatives is the Chamber most directly tied to the will of the citizens. That's explicit in Article II, Section 1: "The purpose of the House of Representatives is to serve as the voice of the Citizens." Ultimately, regardless of the tax, it is the ordinary people who pay every penny of every tax. Even taxes levied on businesses are ultimately passed on to end users, either directly or as part of the cost of goods sold. Therefore, it's the people—specifically the citizens—to whom Congress must be answerable for imposing them.

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[17] *See* **Constitution of 1789,** Article I Section 7, Clause 1: "All Bills for raising Revenue shall originate in the House of Representatives, but the Senate may propose or concur with Amendments as on other Bills."

Tax bills can't have riders. Riders are amendments that are attached to "must-pass," or sometimes just popular legislation, to sneak through unrelated provisions that likely couldn't pass on their own.

Some argue that this is the give-and-take of legislative negotiation. But if a deal is sound, each part should be able to stand alone, as an individual bill. But that's not what most riders are. More often, they're vehicles for special-interest legislation that is rammed through in a borderline nefarious procedure. The resulting bills are bloated. Often, members don't have time to read them before voting. Accountability gets lost.

In short, riders are undemocratic in function. I believe they are usually in intent as well. Still, you don't have to agree with that perspective for my argument to be valid.

> For the purposes of this provision, a tax is any revenue stream described in Article II, Section 4.B.1 of this Charter or any other source of government income. This includes all fees, duties, tariffs, excises, assessments, or other instruments of revenue generation.

Many of us recall the debate over whether the penalty for ignoring the Individual Mandate in the Affordable Care Act (a.k.a. "Obamacare") was a tax. Under this Charter, it would unequivocally constitute a tax. That's not a moral judgment, just a definition.

Why make an issue of it? Precisely because it matters. Reframing a revenue stream as a "fee" could otherwise exempt it from the requirements of this provision. This way, if it causes money to enter the Treasury, it's a tax. Legislate accordingly.

***Article II, Section 4.B.3. Comprehensive Reform Mandate***

> On or before the seventh anniversary of this Charter's ratification, Congress must submit a new, comprehensive taxation framework that is fair to the People. Every five years thereafter, Congress must revisit the taxation framework to ensure it remains fair.

This clause does three things. After an initial pause to allow most of the transition to this Charter to take effect, it requires Congress to submit a tax plan – but not just any plan. The Charter insists that it must be comprehensive and fair.

The first element is comprehensiveness. That means the tax plan covers *everything*. Every loophole, every carve-out, every automatic trigger – they all will be in that one plan. And since it is a tax bill, there can *be* no riders. That means the American people get to see a single, honest plan that covers all federal tax policy

What do the American people believe about their taxes? In the words of Trevor Slattery, "Hey! It's complicated."[18] Jokes aside, Americans' views on taxation are not simple to pin down. Like with most subjects, there is a partisan divide. In fact, partisanship is as powerful a predictor of a person's views on taxation as is their income. (I won't lie, that surprised me.) It is clear that a majority (approximately 55%) believe the wealthy (defined as households with an annual income of $400,000) pay too little, and an overwhelming majority (approximately 70%) believe corporations pay too little.[19] That suggests to me that Americans believe the system is unfair.

The second element requires that the plan be fair to the people. That is a subjective element. What? Then how can it be enforced and measured? Since Challenged Review exists in this Charter,[20] it is a near certainty that a *tax bill* will get challenged. So how is it enforced, and who decides?

*We* enforce it. *We* decide if it's fair to us.

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[18] **Iron Man 3** (Marvel Studios 2013).
[19] **Frank Newport**, *Where Americans Stand on Taxes,* Frank Newport, GALLUP RESEARCH (October 16, 2024), https://news.gallup.com/opinion/polling-matters/652151/americans-stand-taxes.aspx.
[20] *See* **National Charter of the United States** (unratified), Article I, Section 3.B.2. Challenged Review.

Finally, after the first bill, this clause requires that Congress repeat the exercise every five years. Nothing precludes it from making supplemental changes between these intervals. Regardless, every five years, Congress is required to put together a comprehensive tax package. It can be the same one from five years ago, or it can be something new, but it must be the whole picture and fair to the people.

This clause doesn't mandate the mechanics of tax policy. What it does is demand periodic comprehensive review and fairness.

***Article II, Section 4.B.4. Enforcement Mechanism***

> Failure to provide a revised tax code bill for presidential signature at least ninety (90) days before any deadline imposed by Article II, Section 4.B.3 will result in all members of Congress forfeiting twenty-five percent (25%) of their congressional income for that year. Continued failure to provide a revised code by thirty (30) days before the deadline will result in all members forfeiting an additional twenty-five (25%) of their congressional pay for that year. In any year where such a deadline exists, but Congress fails to act by that deadline, every member of Congress will forfeit the remainder of their pay for that year. All forfeited pay that cannot be proactively withheld will be considered tax debt until paid.
>
> If a revised tax code is not in place by the deadline, the tax code already in place remains the effective law.

Congress has a habit of blowing past deadlines or slow walking unpopular duties. For all the reforms this Charter imagines, it can't fix the avoidance instinct. We all seek to avoid painful or harmful experiences. That's what Congress is doing. Since that's the case, we

need deterrence. Deterrence works by making the alternative even worse. In essence, it flips the avoidance instinct – now Congress will want to avoid the fallback instead.

This clause provides deterrence.

Immediate and personal deterrence.

If Congress doesn't finalize a deal by ninety days before the deadline, their pay takes a 25% haircut. If there's still nothing by thirty days before the deadline, they lose another 25%. If they're too stubborn to get it done by the deadline, they lose all their pay for the year. Any forfeited pay that isn't withheld in advance is now a tax debt they each have to pay.

The perspective here is unmistakable; it doesn't matter whose "fault" it is that no deal was reached – everyone in Congress pays the price.

Severe? Yep. That's the point. Failing to fulfill the requirements of this section of the Charter means Congress failed in one of its most fundamental duties. That deserves significant consequences.

One last point. If Congress is derelict in its duty, taxation doesn't end. (I know; that makes you sad. But the government needs revenue.) What happens instead is…nothing. Everything remains as it already was. Taxes continue to be collected under the previous tax code.

Continuity: preserved.

**Article II, Section 4.C. Spending**

Congress is responsible for authorizing all government spending. All spending bills must originate in the House of Representatives. No other branch of government may have discretion over spending. Congress may not delegate this Power by implication, though explicit, narrow discretion may be conferred by legislation.

Congress holds the power of the purse. Taxes were one-half of that picture. Spending is the other. Spending, like taxation, affects the people, so the decision to spend (or not) must begin with those elected directly by the people – the House of Representatives. The reasoning is exactly the same as it was with taxation. Spending directly affects people, so the Chamber closest to them is responsible for starting (or not starting) any spending bill.

Congress has the sole authority over spending under this Charter. The language here is precise. Congress authorizes spending. Neither the President nor the courts can adjust, withhold, or redirect it – those decisions remain with Congress. Not only that, the Judiciary and the Executive are barred from the argument of implied delegation. Congress can make narrow delegations of discretion in law, but that's it.

Artificial limits, such as debt ceilings, are not permitted. Congressional authorization of spending requires either provisions in the authorizing bill or a separate act to pause, suspend, or repeal.

The federal fiscal year begins on October 1.

Artificial crises like "fiscal cliffs" or "debt ceilings" only lead to grandstanding and threats to the nation's credit. Those threats harm the people – plain and simple. They also create false narratives that are cynically designed to divide the public and distract from *genuine* financial stewardship.

This Charter prohibits that kind of nonsense. Once Congress has approved spending, it is approved. Nothing prevents pauses or suspensions in expenditures or even spending cuts. If needed, spending can still be paused or repealed – formally, and by vote.

This Charter also mandates the exact start of the fiscal year. It hasn't changed from our current system, but it is now a constitutional requirement.

***Article II, Section 4.C.1. Balanced Budgets and Deficit Spending***

> Congress may only authorize those expenditures whose projected outlays do not exceed projected revenues for the same fiscal period, as estimated by the Congressional Budget Office.

At the time I am writing this (August 2025), the CBO is projecting the federal budget deficit for this year will be $1.9 trillion.[21] Every American knows it's there, and we are all nervously whistling past the fiscal graveyard day after day, year after year.

This clause requires Congress to pass a balanced budget. While it's impossible to know actual revenues in advance, the CBO routinely provides official estimates. Congress is expected to adhere to them when legislating a budget bill. I'll remind the reader that the

[21] *The Budget and Economic Outlook: 2025 to 2035; By the Numbers,* CONGRESSIONAL BUDGET OFFICE (January 2025).

CBO must be allowed to report its findings independently. It does so *before* anyone in Congress is permitted to see them and respond.[22] Congress can't rely on "independent" projections. It can't resort to guesswork. Finally, revenue projections can't be built on optimistic gamesmanship.

The secret to this clause's effectiveness lies in its precision. The language here says "may only authorize those expenditures…." There is no permissiveness, and the old trick of moving spending "off-budget" won't work because this covers expenditures, not budget items.

Finally, except for the emergency provisions outlined below, there are no carve-outs in this mandate. It applies across the board.

Exceptions of limited scope and fixed duration may be enacted in two circumstances:

1. A formally declared war;
2. An economic downturn, as recognized by a separate joint resolution passing with a majority of Representatives and Senators voting in assent.

In such cases, deficit spending may not exceed the total of the budget items specifically allocated to relieve the triggering condition. It may not be automatically reauthorized

[22] *See* **National Charter of the United States** (unratified), Article II, Section 3.A.2. Congressional Budget Office (CBO).

for any subsequent fiscal period. If an extension is necessary, Congress must provide that extension through separate legislation.

Critics of balanced budget mandates will argue that the ones we have tried in the past lacked mechanisms for emergency flexibility, among other shortcomings. Those critiques land squarely on those historical attempts, but they don't apply here.

"Emergency spending" has also been abused as an excuse for deficit spending. How can we balance the need for emergency flexibility with the fiscal interest in preventing accounting games?

There are only two emergency carve-outs. In a formally declared war, spending above revenue is authorized. In an economic downturn, Congress may enact a joint resolution authorizing emergency deficit spending.

Regardless of how the deficit spending is authorized, the deficit can't be bigger than the expenditures designed to respond to the emergency. What's more, deficit spending can't be automatically reauthorized. Congress has to meet the necessary conditions, and a new spending bill has to be passed to extend the deficit beyond the first year. Congress retains its flexibility to act in crisis, but not without guardrails.

Congress shall have the Power to borrow money on the credit of the United States, but only within the bounds set by this Charter. At all times, both payments for interest and principal are treated as line items in the federal budget.

This subclause is important. First, it explicitly preserves congressional authority to borrow money and echoes the language of the Constitution of 1789.[23] The innovation is that the added subordinate clause, "…but only within the bounds set by this Charter," severely restricts that power. Specifically, it makes the rules on deficit spending airtight. Nobody can come along later and say that Congress doesn't have the power to borrow money. They also couldn't argue that Congress can borrow without restriction.

The last sentence clarifies that principal and interest payments must be included in the budget. Although interest payments are currently included, the budget doesn't include principal payments. That's because debt is "rolled over" into new debt-backed securities. The only debt reduction comes through budget surpluses (we haven't had one in decades). This Charter mandates debt reduction, and the budget is required to reflect that mandate. Debt must be repaid. And repayment must be budgeted.

***Article II, Section 4.C.2. Debt Reduction***

> When debt held by the public exceeds sixty percent (60%) of gross domestic product (GDP), systematic reduction is required during periods of economic expansion, but must be managed to avoid extreme shocks to the broader economy.

If you run trillion-dollar deficits, you rack up debt. There is no way around that fiscal reality. Since that debt must eventually be paid, the questions of how and when become very important.

[23] **Constitution of 1789,** Article I, Section 8, Clause 2: "To borrow Money on the credit of the United States."

The “when” is, or should be, obvious. It’s the same as it is for the average citizen in their household finances. Economists dislike the “household” example in national finance. They argue that households don’t have to engage in deficit spending. They are living a fantasy (or maybe they’re just exceptionally lucky, as a class – but I doubt it). In your household, you pay debt back in good times and (unfortunately) rack it up in hard times. And if you rack up debt in good times, you’ll be in deep…“mud”…when bad times come. That’s no different than government.

The answer to “how” is trickier. Let’s stick with our household example for a bit longer. Even in good times, your family has to eat. If you spend too much of your money on debt service, even in good times, you won’t have money left to buy groceries. Your family will suffer. The same principle applies. The government can’t cut back too severely on necessary “discretionary” spending (non-mandatory but crucial for the economy) to pay down debt. If it does, those cuts will hurt the economy. It’s inescapable.

This language recognizes the need to pay down debt in a good economy, but also to do so carefully to prevent unnecessary economic pain.

During an economic downturn, as defined in Article II, Section 4.C.1, or during a declared war, there is no requirement for debt reduction.

Absent these unusual circumstances, whenever the debt ratio is higher than the trigger threshold, Congress must structure spending such that debt is reduced between one percent (1%) and five percent (5%) of Gross Domestic Product, each year until the debt is below sixty percent (60%).

The same circumstances that allow for deficit spending also allow for a pause on any required debt relief. Outside those circumstances, if debt exceeds 60% of GDP, Congress must reduce it by 1%-5% of GDP annually until it falls below that threshold. It isn't complex. It also isn't especially elegant. It's simply functional. This mandated debt reduction will protect the fiscal health of the United States. And with it, maybe, we can walk past that fiscal graveyard without existential dread.

"How are you going to get us out of our debt crisis if this Charter is ratified, without tanking us?" I usually defer implementation questions until that section of the Charter. I still do, to be honest, but I'll spare a word here. If you genuinely can't continue without seeing the transition/implementation plan for this clause, please refer to Article VII, Section 3.B.2(e). Budgetary and Debt-Reduction Transition Plan. This is a thorny issue, and it isn't irrational to wonder whether it is a utopian fantasy with harmful unintended consequences.

***Article II, Section 4.C.3. Mandatory Government Funding***

> Congress must enact all spending bills funding the operations of the federal government for the subsequent fiscal year, no later than September 30 of each year.

> If no resolution on the budget has passed both chambers of Congress by June 30, all members of Congress forfeit twenty-five percent (25%) of their pay for the current year. If there is still no resolution that has passed both chambers of Congress by August 31, all members of Congress forfeit an additional twenty-five percent (25%) of

their pay for that year. All forfeited pay that cannot be proactively withheld will be considered tax debt until paid.

Failure to meet this requirement by September 30, shall result in the immediate and permanent disqualification of every sitting member of Congress from election or appointment to any federal office, whether legislative, executive, or judicial. In such an instance, the budget from the previous year shall prevail.

Bills funding the government for the fiscal year are not subject to a Presidential veto or remand.

The American people have gotten used to government shutdown threats. Once or twice a year, one party in Congress or the other will stamp their feet, plug their ears, and insist they'll get their way, or they won't fund the government. These are unforced errors. They are unnecessary inducers of stress and strain on the people and the economy.

This is all made worse by the fact that it is also usually performative. A small number of "hardliners" will drag their feet, holding the entire country and our economy hostage. Sometimes they get a symbolic win like a minor policy concession, sometimes they shrug and say, "We tried." But it's never anything that moves the needle. And shutdowns are *expensive*. They don't save the government money.

So, what to do about it? The answer is simple. Make Congress accountable to its core constitutional duty to fund the government. This clause does just that. It sets a clear deadline, then it establishes a very clear and severe escalating series of consequences for

failing to meet that deadline. Those consequences disincentivize delaying until the last minute. In part, enforcement mirrors the tax policy enforcement mechanism from Article II, Section 4.B.4, but the final consequence is more severe.

It's July 1, but we don't have a budget deal? Lose a quarter of your pay, no exceptions. Still don't have it done by September 1? Lose another quarter of your pay. After all of that, you still didn't get it done before the deadline? Every single one of you just committed career suicide. We don't care who started it. We elected you to solve problems, not bicker. Oh, and by the way, "I already spent it, it's too late for you to take it from me" won't work. Anything not withheld is tax debt.

If Congress wants to play games that affect real people's lives, then they can put their own skin in the game.

And the President doesn't get a free pass either. The final sentence serves the purpose of taking away a potential avenue for Presidential abuse of this clause. If the President has veto power over a budget, but failing to pass the budget means all the members of Congress are disqualified from seeking future office, the President suddenly has a tool of extortion. That's a concentration of power. It's the opposite of what the veto is intended for, which is to be a check on Congress. In this scenario, it would not be Congress that needs to be checked. So, spending bills can't be vetoed or remanded.

The people can still initiate a Challenged Review if the budget is out of line, but that wouldn't trigger the penalty. In that circumstance, Congress acted, but the people overrode them.

This clause also includes an emergency provision to continue the functions of the government. If Congress fails to pass a budget by the deadline, the budget from the previous year is rolled over automatically, and government keeps rolling.

***Article II, Section 4.C.4. Judicial Budget Safeguard***

Recently, a Speaker of the House of Representatives threatened to defund all or part of the judiciary over court rulings that he disagreed with.[24] Under the Constitution of 1789, Congress has that power. But it shouldn't.

The idea that a court can be defunded, just because you don't like its rulings or verdicts, is authoritarian. It has no place in a free republic. Worse, that scheme effectively makes the Judiciary subordinate to the Legislature.

Since that specter has materialized, it's now necessary to explicitly protect the judicial budget while still retaining the congressional power of the purse. This clause aims to do that.

> The Judicial Branch shall have a separate budget, not included in the general federal budget.

[24] According to and in agreement with the following sources: *Speaker Mike Johnson Floats Eliminating Federal Courts as GOP Ramps Up Attacks on Judges,* Scott Wong, Melanie Zanona and Rebecca Kaplan, NBC NEWS. (Mar. 25, 2025), https://nbcnews.com/politics/speaker-mike-johnson-floats-eliminating-federal-courts-rcna197986; *Mike Johnson Has Terrifying Threat for Courts That Rule Against Trump,* Edith Olmstead, THE NEW REPUBLIC, (Mar. 25, 2025); and *House Speaker Floats Judiciary Funding Cuts in Courts Battle,* Suzanne Monyak, Maeve Sheehey, BLOOMBERG LAW. (Mar. 25, 2025)

The Chief Justice shall send the Judicial Branch's yearly budget to the Speaker of the House. The Speaker will make the budget request public by the end of the legislative day, provided the Chief Justice submits it before 5 p.m.; otherwise, it must be made public by noon the following day.

The first step is severing the judicial budget from the rest of the federal budget. This mandates that the judiciary have a separate budget. It gets considered and voted on separately. That budget is prepared by the Chief Justice of the Supreme Court on behalf of the entire judicial branch.

Some might object that this is an enormous task that takes the Chief Justice away from their primary duties. I agree. But I temper that critique by noting that the Chief Justice can rely on experts in the Administrative Office of the United States Courts[25] to aid in preparing it.

Once the budget is prepared, the Chief Justice supplies it to the Speaker of the House. The Speaker must publish the proposed budget promptly, before noon the following day. Why such a tightly constrained timeline? And why is it so detailed? After all, this level of detail seems trivial in a foundational document. Why does this clause exist in the first place?

A Speaker of the House threatened to defund the federal courts, either in whole or in part, over court rulings.

[25] *See* **National Charter of the United States** (unratified),

Article IV, Section 6.A. Administrative Office of the United States Courts (AOUSC).

The sharp detail here forces the Speaker's hand *and* puts the budget into the public sphere quickly, forcing accountability.

> The budget is approved unless both chambers vote to reject it by a two-thirds (⅔) majority of those present and voting.

This is an important feature. The judicial budget is "opt-out." That is, it is approved unless a supermajority in both chambers rejects it. If they fail to vote or only a bare majority votes to deny it, the budget is still approved.

If the budget is rejected, the Speaker and the Senate Leader must provide a written explanation within five (5) days, even if the budget deadline passes during that time. If the fiscal year has not concluded, the Chief Justice may then revise and resubmit the budget, starting the process over. This process repeats until the budget is approved or the fiscal year ends. If no budget is approved by September 30 of any year, the most recent approved budget stays in effect.

The Speaker of the House and the Senate Leader are required to provide a written explanation of why their chambers rejected the budget and return it to the Chief Justice. The Chief Justice resubmits a budget, and the process restarts. In theory, the Chief Justice could also elect to accept congressional rejection and continue operating on the previous year's budget. That would be a budget that is notably not adjusted for inflation.

Taken as a whole, this clause preserves Congress's fiscal oversight. It also ensures the courts can't be coerced. That protection is indispensable. The judiciary is where people can turn to defend their rights under the law. It must be beyond the reach of political reprisal.

**Article II, Section 4.D. Commerce Power**

Congress may regulate commerce and transportation. This authority extends to activity between the several States and with foreign nations. It does not extend to any restriction or impediment of the President's foreign policy prerogatives.

The Constitution of 1789 vested Congress with the power to regulate interstate commerce.[26] I've already discussed the historical deformation of that power. This Charter splits the commerce power into two components, which are discussed separately.

As I noted earlier, "interstate commerce" has come to mean almost any activity involving more than one state that eventually involves commerce. However, non-economic activity is now more appropriately addressed under Material Interstate Legislation in this Charter, and we have already discussed it.[27]

This subsection deals with actual commerce and transportation. Specifically, it grants Congress the power to regulate commerce and/or transportation between states and between the United States and other nations.

There are two limitations, one implicit and one explicit. As far as the implicit limitation, it is essential to note that this subsection respects federalism. It does not confer the authority to regulate any commerce or transportation that happens wholly within a single state. The explicit limitation is that it does not allow Congress to limit or interfere in the President's powers of foreign policy.[28] Taken together with the Material Interstate Legislation power, this subsection returns the original commerce clause to its proper scope.

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[26] **Constitution of 1789,** Article I, Section 8, Clause 3.
[27] *See* **National Charter of the United States** (unratified), Article II, Section 4.A.3 Material Interstate Legislation.
[28] *See* **Ibid.,** Article III, Section 2.A.2. Head of State.

***Article II, Section 4.D.1. Definition of Commerce***

> For purposes of this Charter, "commerce" means exchanging goods, services, labor, data, or financial value between persons or entities. It does not apply to the Legislative Branch's powers of taxation.

This clause is straightforward. It is necessary because the constitutional definition of commerce has become increasingly distorted over time.

"But those precedents don't matter if we ratify this Charter. You don't need this." Who made that rule? Interpretation of the Constitution of 1789 relies on precedent in English Common Law, where that document doesn't explicitly supersede it. Why would this Charter's interpretation be different? In fact, for coherence and continuity, we *want* to maintain precedents that aren't directly overturned by the text of the Charter, right? That's because that's how people understand the law today. And if that's the case, we need to define commerce.

The last sentence of this clause also makes an important distinction. The subsection expressly limits this authority to avoid interfering with the President's foreign policy. By limiting the definition of commerce to exclude taxation power,[29] this clause closes a potential end-run around the limitation on the President's ability to impose, suspend, or repeal tariffs.

[29] *See* **National Charter of the United States** (unratified), Article II, Section 4.B. Taxation.

In other words, the President can't claim that Congress lacks power over tariff policy by claiming that their commerce powers are barred from interfering with the executive's foreign policy prerogatives. Since tariffs meet the established definition of a tax, they are, by definition, not enacted, suspended, or repealed on the basis of commerce power. Therefore, they aren't subject to the foreign policy limitation.

***Article II, Section 4.D.2. Limit to Commerce Power***

> This Power may not be used as a pretext to regulate non-commercial conduct or expand federal authority over private, local, or personal activity unless such activity is plainly commercial and within the definition above.
>
> This limitation only applies to laws passed after this Charter is ratified.

This brief clause serves two purposes. First, it formally grounds the limitations of commerce and separates it from Material Interstate Legislation, as I mentioned in the commentary at the beginning of this subsection.

Second, it prevents the wholesale repeal of entire sections of existing law that were based on the broadened understanding of the Commerce Clause that developed over time. The Civil Rights Act remains in effect. Environmental laws aren't suddenly repealed. In short, legal continuity is preserved. Their justifications don't have to meet the newer, tighter definition of commerce.

**Article II, Section 4.E. Institutional Authority**

> Subject only to judicial review, Congress shall have the sole authority to create or dismantle institutions of government, except where such institutions are expressly mandated or prohibited by this Charter. For purposes of this subsection, "institutions of government" means federal offices, agencies, departments, military branches, and other federal entities, including all their subordinate agencies and bodies.

Congress decides the size and scope of government. There are exceptions, which I will discuss below, but this is unambiguous. No one else can eliminate or create agencies, branches of government, or other federal authorities.

The first major exception is the agencies this Charter mandates. Those can't be manipulated by Congress, except as far as the language of the Charter authorizes Congress to do so. Otherwise, why bother enshrining them in constitutional text in the first place?

The other exception is judicial review. The courts can find an institution unconstitutional, but only within the bounds of the Charter itself.

Why is this necessary? The executive's growing power has expanded to the point that it has assumed this authority. At the time of this writing, the constitutionality of the executive assumption of this power hasn't been thoroughly tested in the courts. The current administration has effectively, if not technically, shut down the Department of Education, for example. Litigation is pending, but not yet decided. Regardless of the decision, the impulse to shut down the department shows there is a need to better bind and define this power.

**Article II, Section 4.F. Legislative Oversight**

Congress has the power and duty to oversee the rest of the government and to investigate problems that might need new laws. Congress may not use this power to threaten or intimidate people or groups for political or social purposes.

Congressional oversight of the federal government is necessary. Departments, bureaus, agencies, and so on can't operate without *someone* watching to make sure the worst angels of human nature don't intervene. It doesn't take much insight to know that people who operate without any constraints, at all, eventually go too far. And the question of who should do that is simple to answer. Who, in the federal government, is a deliberative body whose proceedings are open to the scrutiny of the people? Congress.

I'll point out that congressional oversight is not new, in itself. But some provisions in this subsection *are* new. The first one is stated here. "Congress may not…threaten or intimidate…for political or social purposes." Currently, congressional investigations are frequently used to score political points, often at the expense of the individual testifying. It's ugly, demeaning, and beneath the dignity of Congress. Under this Charter, it's also prohibited. Every business of any size knows it is possible to hold people accountable, even to reprimand them, without resorting to making a fool of them. That principle should equally bind Congress.

Only a committee or subcommittee may conduct oversight and investigations. The Chair or Vice Chair must write a statement explaining the reason for the investigation.

> This statement must be made public immediately, unless it contains classified information that must be kept confidential.

This is a simple procedural requirement. It mandates how investigations are called and the requirements for doing so. It isn't particularly novel, except that it's enshrined in this document. That said, it is vital. Why? It's critical because having the stated reason for an investigation published openly holds the committee or subcommittee accountable to the scope of the investigation. If they wander beyond their stated reason for the inquiry, watchdogs can call them on it.

> The written minutes of committee and subcommittee meetings must be made public within forty-eight (48) hours after the end of the meeting, unless they are classified. No video or audio recordings are permitted, so that no Member may use investigations as a platform for delivering speeches or posing questions solely to embarrass witnesses or political opponents.
>
> Performative politics is not an appropriate tool for Congress, and investigations must not be used for that purpose.

This is a very specific transparency mandate. Investigations must publish minutes of unclassified deliberations and testimony. They don't have a choice. But no video or audio recordings are allowed. Why not? The language answers that question. The performative politics I highlighted earlier is expressly forbidden. Congress isn't allowed to do it.

By removing the recordings, most of the incentive for that kind of grandstanding is gone. We've all been subjected to Reels and TikTok videos of Representatives or Senators posing "gotcha" questions for subpoenaed witnesses who have no choice but to endure the abuse. It's disgusting and beneath the dignity of our Congress, even when it affirms what "our side" is doing.

The written transcripts will preserve the exchanges, but they won't have the virality of a recording. This provision shifts the emphasis back to substance. A deliberative body should deliberate – not perform.

**Article II, Section 4.G. Emergency Procedural Powers**

> In certain circumstances, it may become necessary for Congress to act outside regular order to ensure continuity of government.

This is plain observation. It recognizes the need for Congress to occasionally act outside of the usual day-to-day procedures, but it doesn't explain what it can do and when. It is the thesis sentence for the clauses that follow.

***Article II, Section 4.G.1. Declaration of Emergency***

> Congress may invoke emergency procedures when necessary, but only after formally declaring an emergency. Emergencies may only be called when circumstances exist that meet at least one of the following conditions:
>
> - Public health emergency making in-person meetings or meetings in the usual venue unsafe;

- Occupation of all or part of the national capital by an armed force hostile to the duly constituted Congress;
- Disasters, such as fires or floods, which impede or prevent access to the usual places of congressional business;
- Other extraordinary circumstances that make ordinary procedures physically impossible or dangerous.

The declaration of emergency must:

- Be issued jointly by the Speaker of the House and the Leader of the Senate;
- Be accompanied by a public statement that describes the emergency and why ordinary procedures cannot be reasonably followed;
- Specify a start date and, if possible, an estimated duration of the emergency;
- Be transmitted to the Clerk of the House, the Secretary of State, and the Chief Justice of the Supreme Court; and
- Be made publicly accessible within four (4) hours of issuance.

A declaration of this type expires after sixty (60) days, unless both the Senate and the House vote by simple majority to renew for another sixty (60) days. Renewals must state the conditions that continue to justify the continuation of emergency status.

This clause authorizes Congress to invoke emergency procedures only upon meeting specific conditions. It also lays out the specific procedures Congress must follow to declare

an emergency. This isn't the broad "state emergency" power that gets used to trample rights.

Why the specificity? For that matter, why have this provision at all? Although Congress adapted, the COVID-19 pandemic revealed its lack of preparedness for remote deliberation and voting. And what if the Capitol building burned to the ground or a terrorist attack struck Washington? How would Congress deal with that? Emergencies are unpredictable. The one we *don't* imagine is the one most likely to occur. If we could predict what emergencies were coming, they wouldn't be emergencies. But we can't, so we need a system that lets Congress keep working when everything else breaks down.

I've been crystal clear about my skepticism of emergency powers. Emergency powers tend to creep. Once granted, they rarely go away. For example, Proclamation 7463[30] was issued in 2001 under the National Emergencies Act, and it is reviewed annually. It authorized the President to mobilize the military in the wake of the terrorist attacks of 9/11. That proclamation remains in effect. Why? What is the emergency *now*? There were terrorist enemies of the United States throughout the 1980s and 1990s, yet we managed well enough without perpetual emergency.

There are two essential things to note about my example. First, Proclamation 7463 has an annual sunset. Second, the President reauthorizes it every year. It will be up to the test of time to see whether these safeguards hold up any better, but it is important to try.

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[30] **Proclamation Number 7463**, George W. Bush (September 14, 2001). Compiled at **Title 66, Code of Federal Regulations,** beginning at page 199 (2001).

A nitpicky critic will point out that it was an emergency power exercised by the President, and that this clause concerns Congress. While technically true, that argument is in bad faith. The principle holds, regardless of the branch of government.

So, how is Congress limited by this provision?

- It only applies to the operation of Congress. It doesn't authorize the suspension of rights or any similar measures. It also grants Congress precisely zero new powers.
- The leadership of both chambers must agree that a genuine emergency exists, and that emergency has to meet the requirements spelled out here.
- Congress is required to make a formal declaration of emergency. That preserves in the record the original justification for the emergency.
- The declaration has to be published within four hours to the public at large, with copies filed in several locations to preserve the integrity of the declaration. This ensures accountability.

> This provision allows Congress to conduct business outside of regular order when the necessary conditions are met. It must not be understood to grant new Powers to Congress during any such emergency. The emergency provisions only authorize changes to procedure, and do so only while the declared emergency is in effect.

This ties it up in a neat little bow. This provision affects *procedure* only. That point is explicitly restated to force judicial interpretation to match the subclause's clear intent.

Article II, Section 4.G.1(a). Judicial Review

> Any time a declaration has been renewed at least twice, the Supreme Court is required to preemptively review all additional renewals for constitutionality, without the need for a case or controversy. Without a ruling expressly authorizing such

renewals, no third or subsequent renewal can be put into place by Congress, and the emergency ends on or before the end of the current emergency authorization.

This sub-clause is the final lock on the framework of congressional emergency powers. Congress has up to 180 days (the initial 60-day period, plus two renewals) without other oversight. Any extension beyond that point requires a Supreme Court ruling affirming that the constitutional standards for invoking emergency powers remain satisfied.

***Article II, Section 4.G.2. Modified Quorum and Temporary Delegation***

In an emergency that the Speaker and Senate Leader have properly declared, each chamber can operate under a modified quorum requirement, as long as:

1. At least one-third (1/3) of the current Members are present physically or by verified secured remote participation; and
2. The Parliamentarian certifies that each Member has been afforded a reasonable opportunity to attend or connect, except where doing so would endanger life or liberty.

In a congressionally declared emergency, and only then, the rule established at the beginning of this Section (Article II, Section 4) stating that "physical presence in the Capitol must always be considered as presence and the capability to participate," is inoperative.

If Clause 4.G.1 was the "how" of this subsection, 4.G.2 is the "what." It spells out how Congress continues to function during an emergency with a reduced quorum.

The language of this provision is precise; it requires a properly declared emergency and sets two conditions. The first is the minimum number of Members who are required, and what "attendance" can look like.

The second is probably the more important of the two. It requires the Parliamentarian in each chamber to certify that any member wanting to attend has been given that opportunity. Why is this a big deal? The Parliamentarian's certification is crucial – it prevents abuse by ensuring every Member has a fair chance to participate. Without that safeguard, a majority could exploit emergency rules to exclude dissenters. This makes it impossible.

There is also specific authority vested in Congress under *only the conditions of an emergency, as defined by this subsection,* to ignore physical presence in the Capitol building as sufficient to determine capacity to participate in voting and deliberation. Why? Consider the conditions that permit a congressional declaration of emergency: They include armed control of all or part of the nation's capital by a hostile force. This exclusion prevents compelled participation under duress.

If a quorum cannot be met due to death, injury, or dislocation, each Chamber may, by majority vote of those present, adopt a temporary delegation protocol, allowing any present Member to cast votes on behalf of up to two (2) absent Members, but only:

1. If those Members have provided written and signed directives authorizing the delegation, and

2. If the Parliamentarian certifies the authenticity of each delegation directive.

This provision authorizes proxy voting only as a last resort, when a quorum can't be reached otherwise. Even then, two safeguards apply: proxies must be explicitly authorized in writing by the absent Member, and the Parliamentarian must verify authenticity. These two conditions prevent abuse and preserve each Member's agency, even in a crisis.

This is not open-ended proxy power. The prevailing norms are important and the default. However, in exceptional circumstances under *very tight* controls, proxy voting can help preserve the Republic during a crisis.

**Article II, Section 4.H. Declarations of War**

Congress shall have the sole power to declare war, which it may only do upon the request of the President. No use of sustained military action beyond lawful emergency defense (as outlined in Article III, Section 2.A.1) shall be undertaken without such a Declaration. A Declaration of War shall require a simple majority vote in each chamber of Congress.

War is the most serious decision a nation can make. How do we engage in it? When? Who decides? These seem like obvious questions with obvious answers. But what about Korea and Vietnam? Those two conflicts were certainly wars. Except that they weren't, because they were never declared. What about the War on Terror? Was it a war or not? Did Congress declare it one or not? Has it ended?

Neither Korea nor Vietnam was formally declared a war. Still, the soldiers who fought and died in them didn't feel any ambiguity. I doubt the civilians who died, as civilians always do, in those two conflicts were much in the mood to parse whether there was war in their homelands as bombs fell on them.

More fundamentally, to the scope of our discussion, though, our country certainly acted as though it were at war. We drafted soldiers, deployed them, spent money on materiel, and engaged in armed conflict. My purpose isn't to argue whether we *should* have engaged in those wars, or even if they were legal. Plenty of others have had that debate, and I'm not interested in covering that ground. The point isn't to relitigate those conflicts. It is to show how ambiguous law allowed the President to take us to war without an explicit declaration. That ambiguity ends here.

This subsection explains that only Congress can declare war. It clearly states that Congress can only do that if the President requests a declaration. And most importantly, it specifies that, outside of emergency defense, which I hope I don't need to defend the importance of, no sustained military action can happen without a declaration of war. None.

If you read that carefully, you find a catch. I said "sustained." There is a narrow carve-out in Article III for "immediate and covert action in the interest of National Security," which is subject to approval in advance by a Use of Force Advisory Council.[31] Outside of that and defensive action when attacked, the use of military force requires a declaration of war.

[31] *See* **National Charter of the United States** (unratified), Article III, Section 2.A.1. Commander-in-Chief.

Although this is the kind of grave matter that I'd usually prefer a supermajority to approve, the need to take military action is typically urgent. That makes it a terrible time for political gamesmanship. For that reason, and that reason alone, the threshold for declaring war is a simple majority in both houses. War should never hinge on partisan brinksmanship. When the nation must act, a majority is enough.

> No declaration is required against an aggressor if the United States is attacked by military force or other intentional attack on our people, military, or critical or strategic infrastructure, such as, but not limited to, utilities, hospitals, ports, military facilities, or refineries. Acts like these constitute a declaration by the aggressor, creating a state of war between them and the United States.

All of this is all well and good. But what happens when war comes to *us*? Let the enemies of the United States be warned. An attack on our military or infrastructure constitutes a declaration of war *against* us, requiring no declaration in return.

***Article II, Section 4.H.1. Permissible Enemies***

> A Declaration of War may be made against either a sovereign State or a non-state entity that:
>
> 1. Has engaged in or is preparing to engage in one or more acts of armed aggression, terrorism, or coercion against the United States, its Citizens, or its lawful allies; and
> 2. Possesses an organized command structure and the capacity to carry out such acts.

Who can be the subject of a declaration of war? Historically, it has always been legally a nation-state, whether recognized as legitimate or not. That was a workable definition in the 18th and 19th centuries. It was mostly workable in the 20th century, though the Vietnam

War stretched that definition somewhat. Still, the Viet Cong were arguably NVA auxiliaries, so the definition stood.

Then, in 2001, there was a debate in the wake of 9/11 regarding whether Congress could declare war against Al Qaeda.

Al Qaeda isn't a nation. They have no army in the traditional sense, not even as "auxiliaries" like the Viet Cong. All that being true, they were still capable of coordinating an attack on the United States and killing over 3,000 people. The definition and understanding of a declaration of war weren't equal to the moment.

The language of this Charter explicitly allows a declaration to be made against either a sovereign state or a non-state entity. It spells out two conditions that must be met: engaging or preparing violent action against us or our allies, and a command structure and capacity to carry out that action. Al Qaeda meets that bar. Timothy McVeigh and Terry Nichols, the Oklahoma City bombers, would not have.

The final point in this passage is that the threat need not be against us directly. If the threat is to one of our lawful allies, that is, a nation with which we have a formal treaty obligation, that still meets the bar for a permissible enemy.

> Congress shall also have the power to declare war, upon request of the President or upon a joint request of the Vice President and the leaders of both chambers of Congress, against any organized group or coalition that has engaged in coordinated acts of violent armed rebellion or use of armed forces against the United States. Such a Declaration may be made only in response to actual attacks, not in anticipation of

them. Once declared, the full powers of war may be exercised to suppress and defeat the rebellion.

This clause formally repeals the Insurrection Act of 1807.

The previous passage addresses foreign actors – state or non-state. This one deals squarely with domestic threats that rise to the level of rebellion. It establishes a clear boundary for when Congress can declare war against a rebellion. Congress may not preemptively declare war against "insurgents" or "rebels." In such cases, the insurgents must have already launched an attack. This limitation applies only to domestic actors and not to external ones.

But why require an attack to occur first? Surely it's in the best interest of the American people to preempt such an attack, right? It would seem so, but it isn't. Without a requirement for an attack first, there is no bar against bad-faith conjecture about a hypothetical attack being used as a pretext to attack peaceful dissenters.

It's important to acknowledge that this also includes situations in which a State attempts to use its National Guard to "resist or undermine this Charter" and subsequently refuses to yield the Guard to federalization.[32] That will be discussed more fully in the commentary for Article V, Section 8.

What about instances when the President might refuse to request a declaration? The Vice President, Speaker of the House, and Leader of the Senate, acting in concert, may make that

32 *See* **National Charter of the United States** (unratified), Article V, Section 8 – The National Guard.

request of Congress at large. That's an intentionally high bar. The appropriate requester is still the President, but hypothetically, the President might be sympathetic to the rebels for one reason or another. In such a case, there is a relief valve. This secondary triumvirate still has to meet the other criteria (a response to an actual attack), so it isn't a route to a general coup.

On the flip side, this provision renders the Insurrection Act of 1807[33] unnecessary. For that reason, the Charter takes the unusual step of repealing the act by name. That's to avoid even the appearance of conflicting authority.

Once a declaration of war is made against attacking rebels, there are no special rules; the United States can wage war against them the same way it would against any other enemy. They are a wartime enemy, not a special class.

***Article II, Section 4.H.2. Requirements for a Declaration of War***

All Declarations of War must:

1. Identify the entity or entities against whom war is declared;
2. Set forth the constitutional justification, including the nature and severity of the threat;
3. Describe the intended objectives of the conflict in clear terms, even if full restoration or victory cannot be immediately defined; and

33 **Insurrection Act of 1807,** published in **Volume 2, United States Statutes at Large,** beginning at page 443. This reflects the law as originally enacted by Congress, before any portions were later reorganized or codified into the United States Code.

4. Establish fixed conditions and intervals for congressional review, with renewal required for any continuation beyond twelve (12) months.

This list sets out four elements that must appear in a formal declaration of war.

A declaration must define the enemy. The specific entities we are at war with have to be explicitly stated. Remember, except in cases of rebellion, a declaration is needed only for *preemptive* war. Defensive war is considered self-executing. A formal declaration presumed to have been made by the attacker. In those cases, all the entities that attacked are our enemies. But when the United States initiates war, Congress must list the specific enemies. This is to prevent mission creep. If Outer Tusultigard and the Tusultigard Liberation Front are our enemies, Congress has to list them. And that declaration doesn't authorize action against Wekigard, even if Tusultigardan forces have bases there.

The declaration has to explain why a war is justified under the Charter. "We think they're bad," isn't a good enough reason.

Congress also has to define the intended objectives. War is dynamic, so objectives may shift, but they must be stated upfront. That shines a bright light on any strategic drift. It doesn't mean objectives can't change, but it will make those changes obvious.

Finally, a declaration of war isn't perpetual. Congress has to review it and renew it for any continuation beyond one year. They can also list any other review mechanisms that trigger, along with their triggers.

> The full text of any proposed Declaration of War must be published no less than seventy-two (72) hours prior to a final vote, except in cases where delay would produce imminent, irreparable harm, in which case the justification must still be made public within forty-eight (48) hours of the vote.

Congress must be transparent. Even if the nation can't wait three days for a formal declaration, it must still publish its declaration within two days of passing it.

> A Declaration of War does not alter, suspend, or diminish any Right guaranteed by this Charter.

"No emergency can justify reduction, elimination, or suspension of Rights, even on a temporary basis."[34] That includes war.

**Article II, Section 4.I. Selective Service**

> Congress will maintain a Selective Service, requiring all Persons aged 18 through 30 to register.

Sometimes conscriptions are inevitable. They are a severe tool of government, and they rob people of their agency. But times of war require shared sacrifice.

This Charter recognizes the need for conscription, but also its unfair history. Congress is required to maintain a Selective Service as a preparatory measure for the draft, should one be required. It requires all persons between 18 and 30 to register. That includes citizens

[34] *See* **National Charter of the United States** (unratified), Article I, Section 1.C. Supremacy of Rights.

and non-citizens alike. It includes rich and poor alike. It's also gender blind. If you live under the umbrella of protection afforded by the nation's army and you're between 18 and 30, you have an equal stake in its defense.

The slightly wider age range (currently 25) reflects that we are healthier for longer. Some argue that people in their late teens and early twenties are "unsettled," while those approaching their thirties likely have established families. That may be true for some, but it's untrue for others. In any case, what difference does it make? This is a burden. Starting a family or career doesn't relieve you of it.

"But what about foreigners? Maybe you can't trust them…." This doesn't scrap security clearances. The military needs people in many roles, from mortuary services to kitchens. Foreign nationals serve in the military now (a fact that surprised me when I enlisted). They serve with the same honor and distinction as the rest of us. And the civil service can take those considered a risk, freeing someone else for military duty. The point isn't that everyone picks up a rifle. The point is that everyone has skin in the game.

**Article II, Section 4.J. Financial Powers**

> Congress shall have the sole power to establish the currency and shall govern the creation and issuance of its instruments, including all legal tender. This may include both physical currency, as well as currency relying on other means, including, but not necessarily limited to digital transactions or cryptocurrency.

It takes money to navigate a modern economy. Once upon a time, money was physical coins made of precious metals, each with a specific weight. Later, paper currency was issued that

was backed by precious metals held in vaults. Eventually, it evolved into a more conceptual form of exchange. When I buy something with my debit card or when my employer issues my paycheck, it is possible, likely even, that the money represented there will never be expressed in physical currency. Still, the authority to *create* legal tender rests with the government, specifically with Congress. This Charter preserves that authority.

But it goes farther. This Charter also accepts the reality of digital financial trade and the arrival of cryptocurrency. It even accepts the possibility of even newer forms of exchange developing in the future. Recognizing that reality, it reaffirms that the legal tender of the United States is still created by Congress.

Nothing here prevents the mining and trade of cryptocurrency, but it says that only currency, whatever its form, that is created by Congress is considered the "currency of the realm."

Why does this matter? Under the Articles of Confederation, we had a chaotic monetary system. Each state had the power to issue its own currency. By the 1780's, states were printing paper money.[35] Disputes arose over exchange rates. Merchants in one state refused to accept the tender from other states. Americans began relying on foreign currencies, but there was no established standard. This was one of the main catalysts for the call for the convention that ultimately became the Philadelphia Convention.

[35] Rhode Island, New York, New Jersey, North Carolina, South Carolina, Maryland, and Georgia all issued state currencies, but they varied in terms of purpose and enforcement. Vermont did as well, but it was not yet a state.

The exclusive nature of this power under the Constitution of 1789 was a key in holding the Union together, and will be key for the same purpose in the future.

> Congress also has the sole power to establish laws governing counterfeiting or devaluation of the currency.
>
> If Congress allows for a central bank with the power over monetary policy, then that implies Congress has delegated the powers necessary for that purpose to the central bank.

Currency without enforcement is not useful. This passage preserves enforcement as a Congressional duty. Notably, it also explicitly allows Congress to delegate that authority to a central bank, like the present Federal Reserve. Otherwise, the main purpose of this passage is to prevent anyone in the future from trying to argue that the power to enforce counterfeiting or devaluation wasn't explicitly given to Congress.

> Congress shall have the power to establish the laws of bankruptcy that prevail throughout the United States.

The same chaos that plagued the money supply under the Articles of Confederation also infected debt and bankruptcy. Debt exists across state lines. In fact, it exists internationally.

Under a federalist system, separate bankruptcy laws and thresholds could exist in every state. That would create confusion and economic disruption. For example, what would prevent me from racking up a ton of debt in Texas, then moving to Arkansas and declaring bankruptcy, leaving my assets protected from my Texas creditors?

By establishing a uniform set of bankruptcy laws across the nation, the Constitution of 1789 put an end to exactly this chaos. Though it took a century of legislation to solve the problem, this congressional power worked. The need for uniformity is clear from the historical record of the Articles of Confederation period. The constitutional fix worked. So, this Charter just carries that solution forward.

**Article II, Section 4.K. Intellectual Property**

> Congress shall establish and update the laws governing intellectual property within the bounds of this Charter.

This Charter lets Congress keep its authority over intellectual property (which I will abbreviate "IP"). What's new and interesting is the limits.[36]

> Copyright shall last for the life of the author plus fifty (50) years, regardless of transfer of ownership during that period. If a corporation establishes original copyright, the term shall be for one hundred twenty (120) years.
>
> Patents shall extend for twenty years from the filing date, except for medical and pharmaceutical patents, which shall extend for ten (10) years from the date the product or procedure is first authorized for use in the United States by the general public, either with or without a prescription.

[36] **Constitution of 1789,** Article I, Section 8 (abridged): "The Congress shall have Power...To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries...."

Trademarks are valid for ten (10) years from the date of registration, renewable indefinitely.

In most cases, these durations align with international norms. I've been very specific about "corporately created" copyrighted material ("work for hire"). If one hundred twenty years seems long, think of it as seventy years (as if emulating the life of the author) plus fifty years. That's very generous in favor of the copyright holder, but there is a finite limit in constitutional language.

One exception is medical and pharmaceutical patents. They are shorter in duration than other patents. The nature of medical innovation is that, every day that a medical patent is in effect, someone somewhere is denied access to the innovation, to the detriment of health and well-being. That may be because they can't afford it. It may be because their insurance refuses to cover it. Regardless of the reason, some will suffer or even die.

I've done my best to apply my own standard here: to enforce the property rights of the creator and to represent the life and bodily autonomy of the general public. It's notable that the clock on medical patents begins when the item is first marketed, not when the patent is filed. That is to compensate for the time required for testing, regulatory approval, and so on.

Patents and Copyrights may only extend to the original work. Original Work in this context means the totality of the intellectual property at the time of its first registration for protection. Refinements may be separately registered, but the term of the original work remains unchanged.

Finally, revisions and innovations can be protected, but the clock on those only covers the revision on innovation. The underlying work is still subject to its original clock. Throughout this commentary, I have tried to avoid involving individuals and organizations in my argument. This is where I make an exception. Right here, right now, I call on every American to take action to defend this provision. Big Pharma will absolutely fight this tooth and nail. They commonly rely on "evergreening," which is the practice of making a change to a patented product and resetting the patent clock at that point.

Under this language, Pharma (or anyone else) gets a single, defined slice of the calendar that protects their patent. After that, it becomes public property.

**Article II, Section 4.L. Armed Forces**

> Congress has the sole power to establish or abolish military branches and agencies, whether in full or in part. Congress shall also establish a Uniform Code of Military Justice and shall review it for currency during the year of each decennial census.

This paragraph does important work. The President may be the Commander-in-Chief,[37] but that does not give them the power to establish military branches, nor to abolish them. That power belongs to Congress.[38] So does military discipline. Congress has an affirmative duty to establish a Uniform Code of Military Justice (UCMJ). And it has to review the UCMJ every 10 years to ensure it remains timely.

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[37] *See* **National Charter of the United States** (unratified), Article III, Section 2.A.1. Commander-in-Chief.
[38] *See* **Ibid.,** Article II, Section 4.E. Institutional Authority.

> Congress shall enact, within one year of the ratification of this Charter, a uniform law for the activation of the militias, which shall consist of all of the People, aged 18 through 30, who are registered for the Selective Service, as well as the National Guard and the Air National Guard. That law must not allow for nationalization of the militia against the People. No other militia may exist under this Charter.

This passage explains who the militia are and mandates that Congress enact a law governing when and how the militia may be activated. It also establishes an absolute ban on federalizing the militia for use against the people. Finally, it expressly rejects the notion that any other group of people may be considered a constitutionally authorized.

> Those activated from the Selective Service who conscientiously object, or whose physical health precludes military service, will be assigned alternative civilian duties with pay equivalent to that they would receive as members of the military. Service requirements must be equal, regardless of gender, economic class, race, ethnicity, belief, or other legal classifications. No deferments will be granted for educational pursuits.

During the Vietnam War, deferments from the draft for education or health were much easier to get for wealthy American men. A person was far more likely to be drafted if they couldn't get to college or were not white. That turned an authoritarian system into something beginning to resemble the scutage[39] schemes of the Middle Ages. The difference was, instead of paying the King, you paid a doctor or a university, which is arguably even more corrupt. At least by paying the King, medieval nobles were contributing to their liege's military effort in some way.

Health exceptions are no longer an excuse. Congress can build exceptions for severe illness. If you're not healthy enough to serve in the military but are otherwise capable, you will serve in the civil service instead.

Educational deferments are no longer an excuse. Tragically, education will be paused by conscription. You know what else gets paused by conscription? Everyone else's life who is

[39] Scutage was a system that accepted monetary payment in lieu of legally required military service in medieval feudal systems.

unfortunate enough to be drafted. That's an argument for avoiding war, not exempting people from it.

> Congress shall provide for the organization, arming, and discipline of the militias.

This sentence is self-explanatory.

# Article II, Section 5 – The House of Representatives

## Article II, Section 5.A. Qualifications and Term

> To serve in the House of Representatives, a Citizen must be at least twenty-five years old and have been a Citizen of the United States for at least seven years.
>
> Representatives shall serve two-year terms, with each term beginning on January 2 of each odd-numbered year. A duly elected Representative shall serve out the remainder of their term regardless of changes to District boundaries. Redistricting maps shall take effect only at the beginning of the next numbered Congress.

Here, at last, we go to the House of Representatives. This first subsection spells out the qualifications for office. This is not much different than the requirements under the Constitution of 1789. The residency requirements are slightly different, but they are discussed in Article II, Section 1.A.[1]

The passage also spells out the term length and asserts that redistricting can't suddenly make a Representative ineligible just because their home is no longer in the district. Redistricting maps take effect in the *next* Congress, and they don't affect sitting Representatives for the *same* Congress.

[1] Members of Congress are required to live in the State or District they represent. In the Constitution of 1789, Representatives merely had to be residents of their *State*. *See* **Constitution of 1789,** Article I, Section 2, Clause 2: "No Person shall be a Representative who shall not have attained to the Age of twenty five [*sic*] Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen."

**Article II, Section 5.B. Apportionment**

> The number of Representatives apportioned to each State shall be based on its population, as counted in the decennial national census. The total population of the State shall be divided by five hundred fifty thousand (550,000), dropping all remainders. The resulting quotient shall be the number of Representatives for the State. In any case in which that quotient is zero, the entire State shall be apportioned a single Representative.

> There may not be any artificial cap on the total number of Representatives in the House of Representatives. There must be as many as called for, based on population.

Today, the House of Representatives is capped at 435 members. That's a limit that Congress imposed in 1929.[2] For almost a century – almost 41% of the 236 years since the Constitution of 1789 went into effect – the House of Representatives has been capped at 435 members. That cap was set at around 123 million people, according to the 1930 census.

Today's population is around 340 million people. At the time the Constitution of 1789 was ratified, it set the representation at about one Representative for every 62,000 people.[3] When the 435-member cap was enacted, representation was set at somewhere between

[2] **Permanent Apportionment Act of 1929,** published in **Volume 46, United States Statutes at Large,** starting at page 21. This reflects the law as originally enacted by Congress, before any portions were later reorganized or codified into the United States Code.
[3] In fact, the 1789 Constitution sets a lower limit on a district at 30,000 people. *See* **Constitution of 1789,** Article I, Section 2, Clause 3: "The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative...."

275-300 thousand constituents per Representative. Today's representation is roughly one Representative for every 780,000 people.

So, why was the Permanent Apportionment Act passed in the first place? In the 1920 Census, for the first time, more Americans lived in cities than in the countryside. Representatives in small-population and rural states feared losing power. No reapportionment was done following that Census – the only time Congress has failed to do so. The "solution" was to permanently fix the House's size at 435 Members and to put in place an automatic formula for reapportioning seats. The second half of that calculus made sense. The first was a simple refusal to cede democratic power to where the people actually lived.

There was a real fear of a power-shift from rural areas to urban centers. Think about that. A law was written because the politicians in power didn't want to lose their voices, even though they no longer represented the majority of the American people.[4]

It's probably not feasible to get equal representation in the House, but we can certainly get closer. But to do that, we have to allow the House to be based on population, not an artificial cap.

This subsection has to be taken in conjunction with the redistricting standards outlined in Article VI, Section 2.C. This subsection requires that the population of a state be divided by 550,000, dropping all remainders. That's how many Representatives the state gets. If that

[4] Some will claim this characterization is unfair or lacks nuance. They'll point to arguments about floor space or legislative efficiency. Those arguments were absolutely made. But the record is this: every time Congress moved to address reapportionment following the 1920 census, the rural/low-population states blocked it. I'll let you decide whether I'm being unfair.

result is zero, the state gets one Representative, no matter what. Then, Article IV, Section 2.C states that the state's population is divided as equally as possible among those Representatives. Simple.

The smallest-population states (Wyoming, Vermont, Alaska, North Dakota, South Dakota, Delaware, Montana, and, at present, Rhode Island) will have one huge district. That is almost what the state of play is now (Montana and Rhode Island currently get two). All of the other states will have districts of about 550,000 people. That means something much closer to equal representation in the House of Representatives. Regardless of population size, every state is represented by at least one Representative.

As an aside, any new states must meet a population threshold of 550,000 to qualify for statehood.[5] It's all baked in and designed to work together.

> The House must ensure there is sufficient space and technology for all Members to meet and work. If there isn't, the House must build new assembly chambers as close as possible to the current Capitol building. If doing so, reasonable care should be given to the question of whether new assembly chambers should be built for the Senate, as well.

Since this will expand the House, *and* since the Capitol is already overcrowded, this passage imposes an affirmative command on the House to ensure that new facilities are built whenever necessary to accommodate the expanded House. It also states, without

[5] *See* **National Charter of the United States** (unratified), Article V, Section 5.A. Admission to Statehood.

*mandating* anything, that the House should consider whether the *entire* Capitol should be reconstructed. Think about it: the Senate won't grow in size (unless we add states), but even a joint session (like for the State of the Union) would spill over the available space if the House expanded very far.

> When insufficient space exists, and the construction of new assembly chambers is in progress, one or both Chambers of Congress may contract with and meet in auditoriums or other spaces of sufficient size to seat all Members.

So what happens when there isn't enough space, but new assembly chambers are still under construction (as will likely be the case quickly)? We don't need to overthink it. We rent an auditorium while the new chambers are being built. It seems silly, but if this provision weren't encoded here, there would be questions about whether Congress could do that.

**Article II, Section 5.C. Territorial Representation**

> Each U.S. Territory shall elect one Representative to the House of Representatives. That Representative shall have full voting rights and the same powers and duties as all other Members.
>
> Individual Territories are not entitled to more than one Representative, regardless of population.

Territories aren't states. Their exact definition appears in Article V, Section 10,[6] but it boils down to land the United States owns that isn't a state. There is a substantive difference between them. That said, they aren't subjugated either. They are fully part of the United States. Under this Charter, their people are citizens.[7] In many cases, under the current law, they are, though that's murkier, because the courts defined "insular cases" to exclude some Territories from "in the United States."[8]

Currently, those citizens have no meaningful voting representation in Congress. Puerto Rico, American Samoa, Guam, the U.S. Virgin Islands, the Northern Mariana Islands, and Washington D.C. each have a person who is sent to the House of Representatives (their titles and terms vary). These individuals can introduce bills, sit on committees, and vote *in committees*. They can't vote on the floor, except for a procedural "Committee of the Whole." Even there, if their votes would have changed the outcome, a revote is held without them. In other words, they can record a vote, but effectively it doesn't count.

While it's true they aren't states and don't have the federal rights of States, their people still pay taxes. We fought a revolution, in part, on the notion of "No Taxation Without Representation." I wonder what ever happened to that?

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[6] *See* **Ibid.,** Article V, Section 10 – Territories: "A Territory shall be defined as land under United States sovereignty that is not a State or Reservation and has no sovereign status of its own, even if granted limited self-governance by Congress."
[7] *See* **National Charter of the United States** (unratified), Article I, Section 2.A.2. Citizenship.
[8] There are several cases that deal with the relationship between the United States and its territories. While all establish precedent in one way or another, two are important to this line of argumentation. First, see *Downes v. Bidwell*, **Volume 182 United States Reports,** case opinion begins on page 244 (1901). This case establishes that a territory (in this case, Puerto Rico) can belong to the United States without being "in" it for constitutional purposes. It introduced, without definition, the concept of "incorporation" of a territory. The other case that is important to understand is *Rassmussen v. United States,* **Volume 197 United States Reports,** case opinion begins on page 516 (1905). It shows the application of the idea of "incorporation" in constitutional law. Incorporation, or its lack, both have decisive legal consequences, but no definitive rule has been established in the case.

So those people should have at least *some* voice in the government. For that reason, each territory gets one full Member of the House of Representatives. Not an advisory member, not a non-voting member. They get a full-fledged representative.

They don't, however, get proportional representation. Each territory gets one representative. If they want proportional representation, they have to pursue statehood.

### Article II, Section 5.D. Elections and Vacancies

#### *Article II, Section 5.D.1. Electors*

> Representatives shall be elected by the voters of their districts in free, fair, and secure elections.

This is a simple, direct sentence that establishes who may vote for Representatives. There's no need to explain or justify it here.[9]

#### *Article II, Section 5.D.2. Declaration of Candidacy*

> To declare candidacy, a Person must submit a petition signed by at least twenty thousand (20,000) registered voters from that district, as provided for in Article VI, Section 1.A.9 of this Charter. A registered voter may sign petitions for more than one candidate.

[9] In case there is a need to be reminded of who qualifies as a voter, *see* **National Charter of the United States** (unratified), Article I, Section 2.B.3(d). Right to Vote.

Simply declaring candidacy is no longer the means to election. You have to show that a significant number of voters *from your district* want you to run. Being well-funded by outside interests isn't enough.

Now, as far as the voters go, they aren't bound by loyalty once they sign their names. They can sign as many or as few petitions as they like. All they are saying is, "I'd like for this person to run." They may have several people they'd like to run. Part of that might be wanting to hear from diverse voices. Part of that might also be that *voters* won't have to choose only one name when they vote, because elections for Representatives will use acceptance voting rather than party gatekeeping or a runoff.[10]

This clause is a balance of accessibility and seriousness: the bar is high enough to filter out frivolous candidates, but low enough for legitimate challengers, including "dark horse" candidates.

[10] See **Ibid.,** (unratified), Article VI, Section 1.A.6. Acceptance Voting.

***Article II, Section 5.D.3. Vacancy***

> If a seat becomes vacant mid-term, a special election must be held one hundred twenty (120) days after becoming vacant. In such cases, the normal timelines for declaration of candidacy are suspended. Instead, the candidate must submit their petition no later than ninety (90) days prior to the special election. This requirement is waived if a regular election is scheduled for the seat in question within one hundred eighty (180) days of becoming vacant.
>
> A Representative so elected only serves until the regularly scheduled end of the term for the seat, regardless of the date they assume office.
>
> No vacancy may be filled via appointment.

This is largely procedural. Still, there are some important points here. First, there *is* a constitutional procedure for filling a vacancy in the House during a term that does not rely on any partisan mechanism beyond the election. Second, the individual filling the vacancy serves only until the original term ends; their election doesn't reset the clock. And last, the seat can't be filled by appointment.

No Rod Blagojevich-style seat sales. No Greg Abbott delays in scheduling the special election. No end runs around the end of a term.

**Article II, Section 5.E. Leadership Selection and Duties**

This Charter departs from the current system of congressional leadership.

> At the start of each new Congress, the House of Representatives shall elect a Speaker and a Vice Speaker from its duly-elected and sworn membership. The Speaker is chosen first.
>
> To run for either role, in addition to the basic requirements for membership in the House of Representatives, a candidate must be eligible to serve as President or Vice President, in case they are ever needed in the line of succession. There are no other leadership positions in the Chamber.

The House of Representatives is still presided over by the Speaker. What's different is that there are no majority and minority leaders, no party whips. There is only an independently elected Vice Speaker, who is second to the Speaker. Both roles require their holders to be eligible to serve as President in case of a catastrophe.[11]

This limits House leadership to two individuals. Members answer to their constituents, not to party bosses.

> The House sets the procedures for the elections as part of chamber rules, but the votes must be conducted by secret ballot.

[11] The line of succession in this Charter is slightly adjusted from that of the Constitution of 1789. *See* **National Charter of the United States** (unratified), Article III, Section 1.B. Vacancies and Succession *for more information*.

This is another innovation. Currently, Congress is beholden to and dominated by whichever political party is in power. And the election for Speaker is tied to that majority, regardless of who is the best-qualified *leader*. I'm not naive enough to believe political parties will pass from American politics. I *am* aware, however, that many Representatives complain that they are constrained in certain things, including the election of a Speaker, by party affiliation. The secret ballot allows a Representative to vote their conscience without anyone knowing their vote. The secret ballot is tied to leadership elections, not to general legislation.

So why should they be allowed to vote in secret, even for the leadership? Leadership is internal to the Chamber. It's not law; it's the assignment of a role. That role is important. It's vital to the Republic. But it's constrained to the House of Representatives.

Will this help with the partisan chokehold on Congress? I don't know. But it's worth a try. I think it will help.

> The Speaker of the House presides over the House and sets the legislative agenda, subject to the limitations imposed by this Charter. They also assign committees and committee chairs. The Vice Speaker assists the Speaker and assumes their duties in the Speaker's absence or if the Speaker is incapacitated.

This clearly lays out the responsibilities of the Speaker and Vice Speaker and sets a succession/next-person-up structure, which the House currently lacks.

**Article II, Section 5.F. House Procedures**

***Article II, Section 5.F.1. Legislative Procedure***

> Any Member of the House can introduce a bill. Once a bill is introduced, the full text must be made public right away.

Introducing a bill doesn't guarantee debate or a floor vote. It *does* guarantee immediate publication of the full text. No hiding that a backbencher filed a bill. No burying it from public scrutiny.

> Each House seat may, once per Congress, call for a floor vote without leadership assent, and the matter must be taken up for debate the next day and voted upon within ten days. This call shall be made by written petition to the Chamber Parliamentarian

This serves as a check on dictatorial leadership. Any seat may force a debate and a floor vote. The use of the term "seat" is intentional here. This right belongs to the *office,* not the individual holding it. This prevents, for example, the Texas 2nd District from calling for a vote, then that seat becoming vacant, and the new Representative making a new call on a second matter before the end of the Congress. The mechanism is open to every seat, but only once in any given two-year numbered Congress.

The Representative holding that seat files that call, not with the Speaker (who could plausibly bury it), but with the Chamber Parliamentarian, whose *raison d'être*[12] is to ensure the rules are followed.

Even the powerful Speaker of the House has limits.

> No bill can be voted on until it has been public for at least seven days, unless the Speaker and Vice Speaker both agree there is a real emergency.

Bills can be long. They can be complex. They can have far-reaching consequences. For those reasons, Members need time to study and understand them before voting. Sure, leadership can declare an "emergency" and shorten the waiting period, but if they do, they'll have to answer to the American people.

> All final votes must be recorded and shared with the public, along with a brief summary of the bill's provisions.

Not only are votes recorded, but there has to be a summary of the bill. Why? Because no one in the general public reads a 1,200-page bill. Some of us *say* that we do, but let's be honest: only the real wonks actually do that.

The average citizen needs to be able to review a summary and understand the bill that was adopted or rejected. Otherwise, how do *we* exercise oversight?

[12] In this context, *"raison d'être"* means the Chamber Parliamentarian's justifying purpose; their fundamental reason for existing.

> Except as otherwise specifically authorized in this Charter, no vote may be made via secret ballot.

Now, you'll remember that the votes for the Speaker and Vice Speaker are conducted by secret ballot. That's specified in the Charter. I've explained why that is the case and that it should not be the case elsewhere. This enshrines that principle into constitutional language.

***Article II, Section 5.F.2. Public Access and District Accountability***

> Each Representative must hold at least four public town halls or community meetings in their district every year. These meetings must be announced beforehand and open to everyone in the district.

No running from the constituents. Representatives must meet with the communities they represent four times a year. Everyone in the district is invited. No excuses. No hiding. No curated crowds.

> Representatives must maintain an office in their district with staff who can answer questions, assist constituents with government services, and address public concerns.

Most Representatives already do this, but now it isn't optional. If you want to serve the public, you have to be reachable by the public.

> Each Representative must also post their schedule, voting record, and any public statements online in a way that is easy for people to find and understand.

This is basic accountability. Where are you? What are you working on? How did you vote? What did you say? Constituents have a right to know these things, and the Representative now has an affirmative constitutional duty to make them available.

If a Member says something reckless, it has to be published. If they're working on special-interest legislation, their constituents deserve to know.

> If a petition is submitted to a Representative's district or Capitol office asking for the impeachment of a government official, and that petition clearly shows the signatures of at least 10% of the voters in that district, the Representative must file Articles of Impeachment based on the reason stated in the petition.

If 10% of the voters in a district demand the impeachment of an official through a petition, the Representative must file Articles of impeachment. It isn't up to their discretion, and it doesn't matter whether they agree. The voice of the people is their Representative, and it *will* be heard.

***Article II, Section 5.F.3. Impeachment Procedures***

> Federal officials, whether elected or appointed, can only be removed via voluntary resignation, by impeachment, or by provisions of this Charter.

This paragraph applies to the President, Vice President, members of the Cabinet and their undersecretaries, members of Congress, federal judges and justices, and so on. They can resign of their free will. Otherwise, they must be removed through the impeachment

process. There is no other method of removal, except for specific provisions in this Charter.[13]

> Articles of Impeachment may only be brought for behavior rising to the level of felonious lawbreaking or for willful violations or attempts at violations of this Charter.

The Constitution of 1789 notoriously allows impeachment for "high crimes and misdemeanors,"[14] but never defines them. It's theoretically possible (and this is a ridiculous example that would never happen, but it proves my point) for a President to be removed for a speeding ticket. And what is a "high crime," anyway? Treason only? Something else?

The swirling public debate surrounding the Trump impeachments in 2019 and 2021 illustrate the weakness of the older definition, or more accurately, the older *lack* of clear definition. There was legitimate debate about whether conduct had to be criminal, whether obstruction of Congress was impeachable, and so on.

The language here locks it down. Conduct that could result in a felony charge or conduct that is designed to undermine the constitutional order. That's the standard.

> The appropriate House committee must first review all Articles of Impeachment unless they are triggered by a formal petition to a Representative, judicial referral, or process outlined in this Charter.

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[13] *For example, see* **National Charter of the United States** (unratified), Article II, Section 2.C. Permissible Sanctions for Ethics Violations, *which spells out means for a chamber to expel one of its Members for ethics violations without going through the impeachment process.*

[14] **Constitution of 1789,** Article II, Section 4.

Impeachment is a political act. Even when forced by this Charter, it is a political act. If Articles are filed without a forced mechanism, they must be reviewed by committee to scrutinize whether there is enough "there" there to warrant consideration by the full chamber.

On the other hand, this Charter has various other mechanisms that force the introduction of Articles. In those cases, no committee review is required. This Charter's mandate is sufficient grounds for consideration, on its own.

A written summary of the committee's findings must be made public before the full House votes. The full text of the Articles and voting records must also be published. If the committee refers the Articles to the full chamber, Leadership has no discretion; a floor vote must be held within ten days.

The committee's findings are important. They illuminate why the committee saw fit to forward the Articles to the full chamber. That's helpful to the public at large, as well as to the chamber.

Here's a key point: if Articles are referred to the full chamber, a vote is mandatory. Leadership can't bury it with scheduling tricks. There's a constitutional duty to vote - and it must happen within ten days.

A simple majority of the full House is required to approve Articles of Impeachment.

The threshold to refer Articles to the Senate for trial is not high: a simple majority. There is no compelling reason to require any kind of supermajority.

## Article II, Section 6 – The Senate

The Senate defined by this Charter is different from the one we are accustomed to. It is based on the model of the 1789 Constitution, but there are some key differences. Those differences are spelled out in detail throughout this section, but I think a quick overview might help you navigate this section without a lot of extra flipping between footnotes and pages.

### *Selection of Senators*

The Senate is and always has been the voice of the states, not of the people. The people are represented in the House, but the broader interests of entire states are represented in the Senate. From the time the Constitution of 1789 was ratified until 1913, the state legislature chose its senators. That structure was explicitly to ensure the Senate represented the states as political entities.[1]

In 1913, the United States ratified the 17th Amendment. That shifted the selection of Senators to direct popular election.[2] While that prevented back-room deals, it wasn't the only possible solution, and the United States is a federal system. Where was the state's voice in how to choose its Senators? This Charter lets each state choose the qualifications and means of selection of its Senators, but the process has to be transparent and rooted in popular sovereignty.[3]

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[1] **The Federalist, Number 62,** James Madison (1788).
[2] *See* **Constitution of 1789,** Amendment XVII.
[3] **National Charter of the United States** (unratified), Article II, Section 6.B.1. Allocation.

### *Leaner Senate*

The Senate, as defined in the Constitution of 1789, allocates two senators to each state.[4] A number of Constitutional scholars have noted that the Senate is undemocratic because it gives each state equal representation.[5] The usual solution offered is some kind of population-based representation, but that wouldn't fit the purpose of the Senate, as outlined in this Charter: to be the voice of the states and recognized tribes.

The solution in this Charter is, instead, to shrink the Senate and allow the new reconciliation process, which requires a joint session, to dilute that misrepresentation in the final vote to pass any law.

### *Tribal Representation*

Our current system supposedly recognizes the sovereignty of a number of recognized tribes of Native Americans. But those sovereign entities have no voice in the body that is supposed to represent sovereign entities: the Senate. If the Senate represents sovereign entities, then leaving the recognized sovereign tribes voiceless is a constitutional contradiction. This Charter corrects that contradiction and provides a means of tribal representation.[6]

### *Constitutionally Defined Senate Leadership*

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[4] *See* **Constitution of 1789,** Article I, Section 3, Clause 1: "The Senate of the United States shall be composed of two Senators from each State...."

[5] *For an example, consider:* **Fault Lines in the Constitution: The Framers, Their Fights, and the Flaws That Affect Us Today,** (Cynthia Levinson and Sanford Levinson, Peachtree Publishers, 2017).

[6] **National Charter of the United States** (unratified), Article II, Section 6.B.1(c). Tribal Senators.

The Constitution of 1789 says, "The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided. The Senate shall chuse their other Officers, and also a President pro tempore, in the absence of the Vice President, or when he shall exercise the Office of President of the United States."[7] It never mentions majority leaders or minority leaders. That's because, even though they participated in them, the Founders were deeply skeptical of "Factions," or political parties.[8]

This Charter removes the tie-breaking and oversight roles from the Vice President. It mandates the positions of Senate Leader and Deputy Senate Leader. It precludes any other leadership positions. Partisanship will always exist, but this Charter removes it from formal control of the Senate itself.[9]

**Article II, Section 6.A. Qualifications and Term**

To serve in the Senate, a Citizen must be at least thirty (30) years old and meet other requirements as determined by their State. No requirement may exclude Citizens based on economic status, education, profession, or other characteristics unrelated to basic civic capacity. A Senator from a State must maintain their primary residence in their State for the duration of their term.

[7] **Constitution of 1789,** Article I, Section 3, Clauses 4-5.
[8] *See* **The Federalist, Number 10,** James Madison (1787).

[9] **National Charter of the United States** (unratified),

Article II, Section 6.C. Leadership Selection and Duties.

The Senate is the voice of the states and tribes. Because of that, with a few uniform guardrails, the states or tribal council[10] decide the qualifications for the Senate.

Federally, the only qualifications are that a Senator must be thirty, a citizen, and a resident of the State they represent (if they are not a tribal Senator). Outside of those limits, each state or the tribal council decides what other qualifications they want to impose. Their process can't resort to appointment by a governor (which can be corrupted very easily). Within the states, it's also not the responsibility or privilege of the state legislature. It seems most likely to me that the states will stick with the current system of direct election, but they do have the freedom under the Charter, based on the concept of federalism, to devise other ways to choose their Senators. The only requirements are that the Governor or legislature can't choose, and the process must have a democratic basis.

In the case of recognized sovereign tribes, which are sovereign in a way different from states (due to treaties), they collectively act through a tribal council and make their own decisions regarding their Senators. I'll admit that this is a compromise position. To be perfectly and logically consistent, each tribe would send a Senator, but that would give those tribes outsized weight. There are 574 federally recognized tribes in the United States.[11] If each individual tribe had its own Senator, the tribes' voices would drown out those of the states.

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[10] *See* **Ibid.,** Article II, Section 6.B.1(c). Tribal Senators.

[11] **Indian Entities Recognized by and Eligible To Receive Services from the United States Bureau of Indian Affairs** (January 8, 2024). **Title 89, Code of Federal Regulations,** beginning at page 1038 (2024).

Since that is the case, it seems more reasonable to give the collective total of tribes representation in the Senate equal to a single state. While I don't have a single, verifiable count of the number of officially enrolled members of those tribes, there are probably several million. The U.S. Census reported that over 9.6 million people self-identified as American Indian or Alaska Native. Self-identification has some well-documented problems, but for the purpose of this example, it illustrates my point – collectively, Native Americans number in the same range of population as many states.

Now, it could be argued, and I'll not offer a rebuttal of fact, that the interests of an Inuit and a Cherokee are different. I'll admit that is almost certainly true. I'll even admit to being ignorant of what those differences are. But there are shared interests that both carry, which others in this nation don't. This isn't a perfect system, but it gets the Native American voice, *as* a Native American voice, onto the Senate floor. It's a start, and it's better than what we have under the Constitution of 1789.

> Senators serve six-year terms. Approximately one-third (⅓) of Senators begin their term in each odd-numbered year

This is unchanged from our current system.

**Article II, Section 6.B. Allocation, Elections, and Vacancies of Senators**

***Article II, Section 6.B.1. Allocation***

Article II, Section 6.B.1(a). States

> Each State sends one Senator to the Senate. Each State may delegate its Senator however the People of the State want, provided that method is clearly stated and it is

an understandable method grounded in some form of democratic deliberation. It also cannot rely on appointment or election by the Governor or the State legislature. The selection rules must be publicly available at least twelve (12) months before the end of a scheduled term. If a vacancy occurs within that period, the rules most recently in effect will prevail.

To designate the selection method, each State will convene an Assembly of Counties. This Assembly shall consist of one delegate from each county, parish, borough, or similar local jurisdiction, to review the selection rules. The Assembly can establish, affirm, replace, or amend those rules. These Assemblies of Counties must be held at least every ten years.

In the introduction to Article II, I pointed out that the legislature under this Charter will feel familiar, but that it has also been redesigned. There are other passages that reinforce that idea, but this subclause, probably more than any other, really drives that home.

Under the Constitution of 1789, the Senate was originally the voice of the states, and it's the same under this Charter. However, under this Charter, each state sends only one Senator to the Senate.

Why?

There was a long fight at the Philadelphia Convention over the makeup of Congress. That included the Senate. The full details of that fight are beyond the scope of this commentary;

however, the important point is that the states had been used to equal votes in Congress, and the Senate was fashioned to emulate that model.

Unfortunately, that has led to a grossly undemocratic Congress. Wyoming and Rhode Island hold as much sway in the Senate as do California and Texas, despite being the two least and two most populous states, respectively. Still, if the Senate is the voice of the states, equal votes within the chamber seem appropriate. So, what to do?

With the introduction of the joint session for bill reconciliation, there's an opportunity to square this circle. The states can have equal representation *within* the Senate, but by reducing the total number of senators, the representational mismatch by population is diluted by the larger numbers in the House of Representatives. The states get their voice in the Senate. The people get their voice in the House, and the two come together to reconcile their versions of any given bill without the Senate drowning out the House. It's a compromise.

That resolves why there are fewer senators, but how about their means of selection?

If the Senate is the voice of the states, then shouldn't the states decide, within broad guidelines, how they want to choose their Senators? Sure, we want to preserve a democratic process. And we rejected state legislative selection in the early twentieth century. But how do states democratically select their Senators?

That's up to them.

Most, I imagine, won't change from the current process of direct election. It's clean and simple. But some states might prefer caucuses or some other mechanism. The only requirements are that the process be transparent, that it not rely on appointments by the Governor, and that senators not be selected by the state's legislature. The last requirement is that an Assembly of Counties ratify the rules of selection, and that the rules be reviewed by that same Assembly at least every ten years.

One of the features of our republic is its federalist philosophy. The federal government has no place telling the states how to represent themselves. If a state wants a partisan system, that's their choice. If they prefer to directly elect their Senators via ranked-choice or acceptance voting, they can do so. If they prefer local caucuses and a state convention of some sort, they have that option.

> If a State fails to establish the selection rules, it cannot send any new Senators to Congress as terms expire until it does so. Each State has an inherent interest in establishing their selection criteria and methodology.

This is an anti-gaming provision with an enforcement mechanism built in. The state has to do its part.

Frankly, it's unlikely any state would *choose* not to set its rules of selection. The more likely scenario is that the state becomes locked in endless debate or litigation over the selection process. As with the process itself, that's up to them. But if they don't settle it, they can't send new Senators to Congress as their sitting Senators' terms expire. There is even a rare

editorial note in the Charter language itself, pointing out that it's in the state's interest to see that this is settled.

But why no federal backstop if the state doesn't resolve the issue? Because it isn't the federal government's problem. If the state wants a voice in the Senate, it has to meet its responsibility.

> The Supreme Court of the affected State will resolve any disputes regarding the selection rules or requirements beyond the baseline requirements of this Charter. In the case of the Tribal Council, the Council shall appoint an Arbitration Tribunal to hear disputes prior to debating selection criteria.
>
> Appeals are directly reviewable by the United States Supreme Court and do not follow the usual path through the Provincial and Appellate Courts.

There *will* be disputes about the selection criteria. That's not even a bad thing. It's simply a reality of the system. This passage explains who resolves the disputes. The first level of dispute resolution *stays within the State*. That preserves the federalist character of this subclause. If further appeal is warranted, the appeal goes directly to the U.S. Supreme Court. There's no need to filter through the Provisional and District courts. This framework preserves federalism as long as possible, then provides the shortest possible route to final resolution.

I *would* like to point out that there is no requirement that the U.S. Supreme Court grant certiorari.[12] That is, if the court doesn't want to take up the state's appeal, it doesn't have to.

Article II, Section 6.B.1(b). Territories

> Territories are not entitled to Senatorial representation.

This single sentence complements Article II, Section 5.C, which explains territorial representation in the House of Representatives. Territories are not sovereign, so they get no representation in the Senate. The *people* in each territory have limited representation in the House.

The people are taxed and they are represented. But there is no sovereign body – no state or federally recognized sovereign authority – that exists for a territory. Home rule exists, in some cases, but only as granted by Congress. It isn't inherent, and it isn't sovereign. Therefore, there is no *justification* for that nonexistent body to have a voice in the Senate. Indeed, this is the heart of the difference between a state and a territory.

Article II, Section 6.B.1(c). Tribal Senators

> Collectively, the federally recognized Tribes send one Senator to the Senate. The various Tribes shall each send one representative to a Tribal Council, there to determine the manner in which the Senator is chosen. The Council may delegate its Senator in whatever manner that the People of the Tribes, as represented on the Council, choose. Nonetheless, that method must be clearly stated and grounded in

[12] "*Certiorari*" is Latin for "to be informed." Here, it refers to the discretionary review process by which the U.S. Supreme Court would agree to hear an appeal from the state Supreme Court. A petition for certiorari would ask the Court to call up the case, but at least four Justices have to agree. Denial of certiorari leaves the lower court's decision in place without establishing precedent.

some form of democratic deliberation. The Tribal Council must convene at least every ten years.

The Tribes shall otherwise be governed by the same rules with respect to the Senate as apply to the States.

The United States made treaties with various Native American tribes. That history is not one to be proud of, nor is the fact that these tribes exist in a bizarre legal limbo. In Article I, this Charter explicitly granted citizenship rights to members of federally recognized tribes, constitutionalizing what had previously been statutory law.

Native American citizens can currently vote in the elections for the Representative for wherever they live. They can also vote for the Senator from the state where they reside. Why should they get more representation in the Senate than that? The answer lies in the status of the *tribe,* not of the *individual*.

The Senate represents the sovereign voice of the states. But the federally recognized tribes are also sovereign. Collectively, those tribes have interests in common that are distinct from the interests of the states. Those interests deserve a voice, just like any other sovereign entity.

So far, the logic is fairly easy to follow here. But there are many tribes. Why do they have to combine their representation? According to the Federal Register, there are 574 federally recognized tribes.[13] Even if each of them were afforded a senator, they would outnumber the states collectively. There would be over ten times as many tribal senators (574) as for the states (50).

I can't find reliable figures for the total population of enrolled Native Americans. The U.S. Census reported that over 9 million people self-identified as American Indian or Alaska Native, alone or in any combination.[14] Self-identification has some well-documented problems, but for the purpose of this example, it illustrates my point. Collectively, Native Americans number about the same as the populations of many states. That being the case, the admittedly imperfect compromise is to treat these groups as a collective sovereignty for the purposes of senatorial representation. Their shared interest, distinct from that of

[13] **Indian Entities Recognized by and Eligible to Receive Services From the United States Bureau of Indian Affairs** (January 8, 2024). Compiled at **Title 89, Code of Federal Regulations** (2024).
[14] **U.S. Census Bureau**, *2020 Census Detailed Data for American Indian & Alaskan Native Populations* (2023).

the states, centers on their historical ethnic and treaty relationships with the United States. In other words, taken together, the Native American tribes count as equal to a single state for the purposes of senatorial representation. This is a significant expansion over their current status.

But how do they select those Senators? After all, they don't have counties, so there can't be an Assembly of Counties. How is the method of selection determined? And how are disputes surrounding that resolved? This sub-clause outlines the answers to those questions. The tribes send delegates to a council. That council empanels a tribunal to hear disputes *before* deliberating on a selection process. That prevents conflicts of interest later. Basically, the Tribal Council serves the same function as the state Assembly of Counties.

After that, the process is somewhat like that for the states. One difference remains: states are not allowed to have legislative selection, but there is no similar prohibition for the Tribal Council. The requirement for democratic deliberation remains intact, but that *could* simply take the form of election by the Tribal Council. Tribal governance traditions differ from those of the states. This Charter defers to those traditions.

Everything else, including appellate review by the Supreme Court of the United States, is the same as for the states.

***Article II, Section 6.B.2. Vacancy***

> If a seat in the Senate becomes vacant in the middle of a term, the same rules shall apply for filling it as apply in similar circumstances in the House of Representatives, as outlined in Article II, Section 5.D.3.
>
> The sole difference between the House of Representatives and the Senate shall be that a special election in the Senate must follow the selection criteria developed by the Assembly of Counties for that State.

This forces a mirror image of the provision for vacancies in the House of Representatives.[15] The only thing that is different in substance or philosophy is the selection method. Since each state controls the manner of their Senators' selections, that has to be addressed here. The Charter makes it clear that the state has no choice – it has to use the same selection criteria and method as it would if this were a regularly scheduled vacancy. The language is an "anti-shenanigans" measure.

**Article II, Section 6.C. Leadership Selection and Duties**

> At the start of each new Congress, the Senate elects a Leader and Deputy Leader. The Leader is chosen first.
>
> To run for either role, a Senator must meet the rules for serving in the Senate and be eligible to serve as President or Vice President, in case they are ever needed in the line of succession. There are no other leadership positions in the Senate.
>
> The Senate sets the procedures for the election, but the vote itself must be conducted by secret ballot.
>
> The Leader of the Senate presides over the Senate and sets the legislative agenda, in accordance with the mandates of this Charter. They also assign committees and

[15] *See* **National Charter of the United States** (unratified), Article II, Section 5.D.3. Vacancy.

committee chairs. The Deputy Leader assists the Leader and assumes their duties in their absence or if they are incapacitated.

I'll bet this looks familiar. This is a near duplicate of the leadership provisions for the House of Representatives.[16] The difference is the office titles. Where the House has a Speaker and Vice Speaker, the Senate has a Leader and Deputy Leader. This keeps titles that *feel* familiar, though they are not identical to those in use now. There is still no room for party-based leadership – no majority or minority leaders, and no whips.

While this leadership structure closely mirrors that of the House under this Charter, it is important to note a key difference: changes to the Vice President of the United States and the Senate *President Pro Tempore*. Under the Constitution of 1789, the Vice President of the United States is the President of the Senate and is supposed to preside over it. Furthermore, the Senate is expected to select a *President Pro Tempore* to serve in that capacity when the Vice President is unavailable.[17]

In practice, the Vice President currently presides over the Senate only at joint sessions of Congress and when a likely tie vote is in the offing. The original constitutional role of the Vice President has mostly been ignored. And the *President Pro Tempore* is selected by a simple majority vote in the Senate. Currently, by custom (not law), the Senate usually elects the senior member of the majority party.

[16] *See* **National Charter of the United States** (unratified), Article II, Section 5.E. Leadership Selection and Duties.
[17] *See* **Constitution of 1789,** Article I, Section 3, Clauses 4-5.

Under this Charter, the Vice President still holds the tie-breaker vote,[18] but has no other role in the Senate whatsoever. The Senate Leader presides over the Senate, and the Deputy Leader serves as their backup should the need arise.

## Article II, Section 6.D. Senate Procedures

### *Article II, Section 6.D.1. Deliberative Nature of the Senate*

> The Senate is a more deliberative body than the House of Representatives. Each Senator is entitled to speak a single time on any bill. The duration of their address is limited only by their physical ability to remain at the podium (or reasonable accommodation thereof in cases of disability) without taking breaks for biological necessity or rest. Procedural rules, with the sole exception of the one-minute adjournment between 12:00 a.m. and 12:01 a.m. to limit the extent of the legislative day, cannot be used to interrupt this address and permit, intentionally or otherwise, a means to circumvent the intent of this limitation. There is no filibuster.

Hoo boy. This is a big one. If you're out of power, the filibuster is the savior of democracy. If you're in power, it is the pitchfork of the Devil himself.

Right now, the Senate has something called the filibuster. It is not constitutionally mandated. In 1806, Aaron Burr (yes, if you've seen *Hamilton,* it's *that* Aaron Burr) suggested removing a rule requiring a simple majority to end debate. That inadvertently allowed for endless debate. Since that time, endless debate, a tactic known as the

[18] *See* **Ibid.,** Article III, Article III, Section 2.B.2. Senatorial Tie-Breaker.

filibuster,[19] has been used to block votes on legislation and other matters (appointments, etc.). An official cloture rule (a vote to end debate) was adopted in 1917 to limit this practice, and it was tightened further in 1975. Today, to end debate, a cloture threshold of three-fifths (60 votes) is required.

In practice, the mere threat of a filibuster is often enough to kill a bill or an appointment confirmation in the Senate. That's ridiculous. Debate is fine. Obstruction is not.

The Charter preserves debate. You want to debate for a long time? Fine, get up there and speak, but you have to actually be there, and you can only speak for as long as your body will permit – if you need to eat, sleep, or use the bathroom, your time is up. A coordinated campaign of several Senators could keep this going for a long time. But not indefinitely; each Senator may only speak once.

In the end, if it is on the agenda, it will eventually get a vote. Period.

***Article II, Section 6.D.2. Requirement to Vote***

> Once all Senators have spoken or waived their right to do so, there must be a vote on any debated bill within twenty-four hours or at the end of seven days from being made public, whichever is later.

[19] Filibuster comes from the Dutch word *vrijbuiter,* which means "freebooter" or "pirate." It became *filibustero* in Spanish and *filibustier* in French. By the mid-1800s, the term "filibuster" began to be used in American politics to refer to obstructionist tactics, particularly long-winded speeches intended to delay or block legislative action. I'd argue that whimsical little etymological jaunt tells you what you need to know about the filibuster.

Once debate has begun on a bill, it can't be killed. Win, lose, or draw, leadership must allow a vote after every Senator who wishes to speak has had their chance.

Now, I'll point out that this clause does *not* say every bill gets a vote. It says every bill that gets *debated* gets one. The Leader still controls the agenda (except for specific exceptions that are spelled out elsewhere in the Charter).

***Article II, Section 6.D.3. Requirements for the Senatorial Agenda***

Article II, Section 6.D.3(a). Introduction of Bills

> Any Senator can introduce a bill in writing by presenting it to the Chamber Parliamentarian while the Senate is in session. Once a bill is introduced, the full text must be made public within twenty-four (24) hours.

Under this Charter, any Senator can introduce a bill, just like they can now. The important innovation at the time of introduction is that, once submitted, the bill must be published within twenty-four hours of its introduction. Bills can't be submitted quietly or in secret.

Article II, Section 6.D.3(b). Mandatory Review Period

> No bill can be voted on until it has been public for at least seven days, unless the Leader and Deputy Leader both agree there is a real emergency.

Once it is published, a bill can't be voted on for at least 7 days. But what if the bill addresses a legitimately urgent need? Very little that happens in Congress is quite that urgent, but if the bill really is, then a vote can be held sooner. For that to happen, the Senate Leader and Deputy Leader have to agree that it *is* an emergency.

Article II, Section 6.D.3(c). Senate Leader Responsibilities for Introduced Bills

> Scheduling bills for votes, referral to committee, and other procedural matters is the responsibility of the Senate Leader. If a properly introduced and published bill has not reached the floor within ninety (90) in-session days of introduction, the Senate Leader must publicly justify that omission. Every thirty (30) in-session days thereafter that the bill does not reach the floor, the Leader must rejustify that omission. All such justifications must be made at noon on a weekday in a public conference with the press and published in the Congressional Record.

The Senate Leader can refuse to take up a bill, but they can't bury it. After three months of in-session time has passed, they have to explain why they aren't allowing debate and a vote. Every additional 30 days requires a fresh explanation. You may be wondering, "Why at noon on a weekday?" This prevents the current, widespread practice of releasing bad news on Friday at 6 p.m. If it's a long weekend, that's even better. In other words, it's an anti-hiding measure. It *will* make the news cycle.

Notice that there's no requirement for what does and doesn't have to be taken up, only radical transparency about *why a bill wasn't.*

> For the purposes of this provision, reaching the floor is defined as beginning debate that will trigger the eventual requirement to vote.

So what does "reaching the floor" mean? Meaningful debate and a vote. Full stop.[20]

Article II, Section 6.D.3(d). Dismissal of Bills

> Any bill that is introduced without reaching the floor by the end of the annual session is withdrawn. Further consideration requires resubmission in a subsequent year.

[20] *See* **National Charter of the United States** (unratified), Article II, Section 6.D.2. Requirement to Vote.

It's possible that the Senate Leader will be willing to prevent a bill from ever reaching the floor. In fact, it's more than possible; it's likely to happen. Routinely. If the end of the annual session[21] arrives without the bill reaching the floor, it's dead. It can be reintroduced next year or five years from now, or whenever, but it's dead until and unless that happens. That's necessary for hygiene. Normally, that would be something handled by the Senate's rules, but because of the other requirements in this clause, it has to be spelled out in the black letter text of the Charter.

Article II, Section 6.D.3(e). Voting Transparency

> All final votes must be recorded and shared with the public, along with a short summary of what the bill does. Except for the selection of leadership and as otherwise explicitly authorized by this Charter, secret ballots are prohibited.

Transparency is a recurring theme in this Charter. This is just another sub-clause in that vein. Just as with the House, secrecy is not on the menu, except in very specific circumstances enshrined in the Charter itself.

***Article II, Section 6.D.4. Public Access and Senatorial Accountability***

> Each Senator must hold at least four public town halls or community meetings in their State every year. These meetings must be announced beforehand and open to everyone in the district.
>
> Senators must keep an office in their State's Capital with staff who can answer questions, help people with government services, and listen to public concerns. In large States, the Senator may, with approval from the Senate Leader serving at the time of the request, establish other branch offices throughout their State for the same purpose.

[21] *See* **Ibid.,** Article II, Section 1.C.1. Numbered Congresses. *An annual session runs from January 2 until January 2 of the following year.*

Each Senator must also post their schedule, voting record, and their public speeches and addresses online in a way that is easy for people to find and understand.

"Hey, didn't I already read that?" Well, almost. This is very like the requirements for Representatives in the House.[22] There are only two differences.

First, there's an addition that allows for multiple branch offices throughout a State with approval from the Senate Leader. That's designed to improve accessibility for the people of the State. Approval is required because funds are needed to operate that office. It's about budget allocation, not Leadership deciding who deserves a branch office.

The second difference concerns the impeachment process. The parallel clause for Representatives includes a petition process for introducing Articles of Impeachment. That isn't necessary for a Senator, since they don't introduce impeachment; they try it.[23]

As with the House, the purpose here is accessibility and accountability. Senators need to be reachable, and they have to answer for the work they do.

[22] *See* **National Charter of the United States** (unratified), Article II, Section 5.F.2. Public Access and District Accountability.
[23] **Ibid.,** Article II, Section 6.D.5. Impeachment Trials.

***Article II, Section 6.D.5. Impeachment Trials***

Article II, Section 6.D.5(a). Inception of Trials for Impeachment

> Once the Speaker of the House delivers to the Leader of the Senate a vote affirming Articles of Impeachment against any federal official, all other business of the Senate ceases.

Impeachment stops everything. It is a very serious matter, and an impeachment trial in the Senate needs to be resolved quickly. Why? Well, let's talk a little higher level about what impeachment is.

We'll start with what it isn't. It isn't a criminal trial. Conviction in the Senate doesn't send anyone to prison. It doesn't even confer a criminal charge, even when it is based on alleged criminal activity.

So, what is it, then? It's a political tool for removing an official from office for alleged felonious behavior or conduct that undermines this Charter. When I say it is a "political" tool, it's important to understand the connotation. In this sense, it doesn't mean "partisan"; it means a tool used by political officials to remove another political official from office.

Now, although it is a political tool, it has a form that mimics the judicial system, to an extent. The debate and vote on Articles of Impeachment in the House of Representatives is an inexact analog of the grand jury process. So, once we get to the Senate, we are at the trial phase. The body of Representatives closest to the people of the United States decided, in essence, that there is sufficient evidence to believe that a trial should go forward on the charges in the Articles of Impeachment.

In other words, once an impeachment proceeding reaches the Senate, we are talking about an individual in a position of high trust and responsibility whose alleged behavior has reached a threshold high enough to convince the House to ask the Senate to remove them from office.

When we've reached that level, it's imperative that we act quickly and decisively to resolve the matter one way or the other.

Every Senator will swear or affirm the following:
"I, (full legal name), solemnly swear (or affirm), that I will be an impartial judge in the matter of the trial for impeachment of (full legal name of the person being impeached) on the charge(s) of (basis of impeachment). I positively affirm that I understand the People of the United States have vested in me the authority to ensure our Republic's integrity. I will faithfully listen to the evidence and vote in the way the evidence and the laws require."
The Leader of the Senate will administer this Oath to all other Senators, and then the Deputy Leader will administer this Oath to the Leader.

This is one of those places where it probably looks like the Charter descends into nitpicky micromanagement. It does. But it does so for a good constitutional reason. Short of declaring war, an impeachment trial in the Senate may be the gravest duty a Senator faces. We expect jurors in municipal court to swear an oath to follow the law. Senators who are charged with deciding whether an official can remain in office should be held to the same standard. And the oath outlined here explicitly requires each Senator to verbally state the name of the person charged, the alleged offenses, and that the Senator understands that the

American people have given them this authority to defend the Republic. It seems procedural, but it is vital.

Article II. Section 6.D.5(b). Presiding Officer

> If the President of the United States is on trial, the Chief Justice of the Supreme Court will preside. In all other trials, the Leader of the Senate will preside unless they recuse themselves for a publicly disclosed cause, in which case, the Deputy Leader will preside. If the Deputy Leader similarly recuses themselves, the Senators will hold a secret ballot and choose a Presiding Officer for the trial.

This is more procedural detail designed to eliminate any vagueness about who presides over which trials, and how that presiding official is chosen. It's important to note, because one might ask, that under this Charter, it's virtually impossible for a sitting president to have appointed the Chief Justice of the Supreme Court.[24]

[24] *See* **National Charter of the United States** (unratified), Article IV, Section 3.A.3. It is theoretically possible for a president to appoint the justice who is serving as Chief Justice, but it would require *at least* five justices to retire or die while that president was in office, so the likelihood is vanishingly small.

Article II, Section 6.D.5(c). Evidentiary Rules and Adjudication

> The Senate will choose the rules of evidence to be used in the trial in the open, with all votes public, and the Parliamentarian will judge whether those rules are applicable as evidence and testimony are presented. Any Senator may ask for clarification on the rules.

This is very similar to the rules governing the Senate, itself. The Senate chooses them, but the Parliamentarian enforces them. Note that admission or exclusion of evidence is the purview – according to the rules of evidence established by the Senate – of the Parliamentarian, not the Presiding Officer. The idea is that a professional, non-political arbiter is more likely to neutrally judge the rules than a political appointee or elected official. That is (hopefully) especially true in the case of the Parliamentarian, whose job is literally to interpret the rules of the Senate from day to day.

Article II, Section 6.D.5(d). Conviction or Exoneration

> The threshold of conviction is two-thirds ($^2/_3$) of Senators voting. Votes and deliberations are conducted by secret ballot, but the Secretary of the Senate will record the votes and publicly disclose them on the fifth anniversary of the verdict's announcement.

There are three points here:

- Conviction requires a supermajority. A simple majority seems cleaner, but it can lead to the official's removal from office, so the higher bar here seems defensible.
- Votes to acquit or convict are initially secret to temporarily shield Senators from partisan attacks for voting their conscience.
- After five years have passed and the tensions and passions of the moment have abated, the votes are released for transparency. Five years is an arbitrary number, but it's designed to be long enough for passions to have calmed but proximate enough to still affect the political careers of the Senators involved, in most cases.

Someone is sure to ask, "Why should a Senator get the cover of anonymity, at all, even for just five years?" Well, why does *any* juror get anonymity surrounding their vote?

A "guilty " verdict will result in the convicted person being immediately removed from office, but will not incur any criminal penalty. Nothing in this Charter prevents the Person in question from facing criminal prosecution once removed.

There is no option to "censure." If an official is guilty, they are out of office. *And* the impeachment trial is not a criminal trial, so they *can* be charged with crimes once removed, if appropriate.

# Article II, Section 7 – Required Federal Agencies

## Article II, Section 7.A. Census Bureau

### *Article II, Section 7.A.1. Composition and Location*

Congress shall establish the Census Bureau by law.

The Bureau shall operate within the Executive Branch.

This is simple and requires no explanation.

### *Article II, Section 7.A.2. Mandate*

It must conduct a decennial survey. That survey must accomplish the following goals:

- Enumerating the whole population of each state and Territory.
- Establishing percentiles for individual income from single-source employment of the federally recognized full-time workforce in the United States.

Why does the Census Bureau exist, and what is it required to do? This is the whole reason why it's enshrined in the Charter. Multiple provisions of this Charter rely on data from the decennial census. Judges, Members of Congress, and others are paid according to percentiles of individual income as reported by the decennial census. The apportionment of Representatives relies on the population count done in the decennial census. In short, this single bureau is responsible for a huge part of the mechanics of this Charter. The Bureau's purpose and mandate are simple but also vital and powerful, so they must be explicit in the Charter itself.

One question that might arise is why the specificity on how income is calculated? The Charter pegs official pay to these numbers. The idea is to match them to ordinary

Americans in a way. Where pay is pegged this way, it applies to high-profile positions, and the pay is intentionally generous by ordinary working Americans' standards. Requiring the count to be tied to full-time workers with a single job precludes the person working two or three jobs to make ends meet from artificially skewing the number, and likewise the entrepreneur making nine figures but not officially employed from doing the same.

> The decennial census must be conducted every ten years in the Census Year, which is the year ending in zero. The two types of data required by this section must be publicly available by January 2 of the year following the survey, that is, in years ending in one.

Equally vital is when the Census Bureau does this work, as well as when it must be reported. This portion of the Mandate Clause specifies those points. There's no ambiguity.

***Article II, Section 7.A.3. Supplemental Duties***

> The Census Bureau may be directed by Congress to gather supplementary information in years other than the Census year. Supplementary information may not be gathered during the Census Year.

So what does the Bureau do the other nine years of the decade? In theory, Congress could disband them until the next decennial census. That's unlikely, though. Currently, the Census Bureau collects and reports a variety of data regularly. That's a useful function, and it's likely Congress would want to continue that practice. That seems reasonable.

But they have only 365 days to conduct the decennial census *and* publish it. So in the Census Year, that's the only thing they do. The other nine years? Congress can mandate that they carry out supplementary surveys and report on them.

***Article II, Section 7.A.4. Anti-Outsourcing Mandate***

> The Census Bureau cannot be outsourced.

There is a mania in some quarters to move legitimate government functions to private industry.

When you think of the uses to which census data is applied, those functions are way too important and sensitive to be done in the private sector. Some things are legitimate functions of government. This is one of them.

Private actors can't be controlled in the same way as public actors can. Data security, rigor, cost-cutting.... These are all risks that are much more difficult to manage if the Bureau is moved to the private sector.

**Article II, Section 7.B. Postal Service**

> Congress shall establish the Postal Service by law. The Postal Service will be a civic institution with a mandate for universal delivery of letters and parcels at reasonable rates. Congress may attempt to recover some or all of the costs of operating the Postal Service, but it is neither required to be a profit center nor self-sufficient.
>
> The Postal Service cannot be outsourced.

I am writing this in 2025. Sure, the Constitution of 1789 allowed Congress to establish post offices,[1] but the Framers drafted that document in 1787. They didn't have email, UPS, FedEx, DHL, or any of the other myriad means of letter and parcel delivery available today. Why not take this opportunity to remove this from the Constitution?

Because the Postal Service, for all the fact that Americans love to gripe about it, *is* American. It is a low-cost alternative to those for-profit models. It's generally affordable to even the poorest among us. Is it perfect? No, but neither are the alternatives.

And it gets used. Don't believe me? In 2023 and 2024, postal distribution centers in Houston experienced lengthy delays. The people served by it were so outraged that Congressman Al Green launched a congressional investigation. The postal service is still extremely relevant to the American people.

[1] **Constitution of 1789**, Article I, Section 8.

Currently, it is such a reliable and affordable option that many mail-order companies will use commercial 3rd-party carriers to ship to a Postal Service distribution center, then rely on the Postal Service for “last mile” delivery to the final destination.

However, there are increasing demands that it be financially self-sufficient, outsourced to private enterprises, or turn a profit. These demands risk defeating its egalitarian purpose.

The language here establishes the Postal Service. It protects the Postal Service's affordability. And it protects the Postal Service from privatization.

## Article II, Section 8 – Local Engagement With Congress

### Article II, Section 8.A. Subdistricts

> Each Congressional District shall be subdivided as outlined in Article VI, Section 2.C of this Charter. Each of these subdivisions shall be referred to as a Subdistrict.

What's going on here? I'll ask you to be a little bit patient, because this entire section scaffolds something new: a way to bring representation closer to the people. This subsection is the first step, and it's really simple. It divides each congressional district into subdistricts. In most cases, there are about 10 subdistricts in each district.[1]

### Article II, Section 8.B. Local Delegates

In 1789, there were roughly 62,000 people per Representative in the House of Representatives (according to the immoral accounting of the Three-Fifths Compromise). Today, that figure is around 780,000. Our Representatives are an order of magnitude farther from us.

How do we ensure that they hear *all* of our voices? How do we *all* communicate our concerns?

This section addresses that question with a new constitutional office: the Local Delegate.

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[1] *See* **National Charter of the United States** (unratified), Article VI, Section 2.C. Redistricting Standards and Priorities.

### *Article II, Section 8.B.1. Election and Eligibility*

> Each Subdistrict shall directly elect one independent Local Delegate. Local Delegates must be Citizens, residents of the Subdistrict, and be legally eligible to vote in federal elections.
>
> Local Delegates are neither subordinate nor superior to the Representative for their District.

Each congressional district is divided into several smaller subdistricts, each electing its own Local Delegate. The specific rubric for drawing subdistricts is handled elsewhere in the Charter, but for our purposes here, just understand that the total population of the congressional district is divided by 55,000, and then divided into that many subdistricts.[2]

These Local Delegates are elected independently of the Representative for the district. That means a district that generally supports Bob Smith may have a subdistrict or two that don't, and they can elect a Local Delegate who doesn't, either. While these Local Delegates aren't legislators,[3] they aren't subordinate to the Representative. They are constitutionally their equals.

### *Article II, Section 8.B.2. Terms*

> They shall serve a term of two years, renewable up to three times, for a total allowable service of eight years across all terms. Terms shall align with the terms of

[2] *For the full specifics, see* **National Charter of the United States** (unratified), Article VI, Section 2.C. Redistricting Standards and Priorities.
[3] *See* **Ibid.,** Article II, Section 8.B.4. Duties, Authority, and Responsibilities.

Representatives. Vacancies mid-term shall be filled in the same manner as Representatives.

This is simple and self-explanatory mechanical housekeeping. It aligns with the terms of the Representatives.

***Article II, Section 8.B.3. Compensation and Required Infrastructure***

Local Delegates work one continuous week of each month. They shall be paid monthly for their service at a rate equal to one-fourth of the mean individual income in the United States at the time of the most recent decennial census.

Local Delegates work part-time and are paid accordingly.

Each Local Delegate is entitled to one full-time administrative assistant and a small office located within the Subdistrict. If a Representative's local congressional office is within a Subdistrict, the Local Delegate's office may be located in the same physical plant, but staff may not be shared. The Local Delegate is wholly independent of the Representative.

This provides logistical support for the Local Delegate, enabling some asset-sharing with the Representative where it makes sense while maintaining their independence. The reason this is specified here is so that Local Delegates, who are likely to be a pain in the neck for Representatives, have the minimum resources necessary to carry out their duties.

Congress must provide funding for the Local Delegate, their assistant, and the office from its operating budget.

And Congress can't get away with starving their funding, either.

***Article II, Section 8.B.4. Duties, Authority, and Responsibilities***

Article II, Section 8.B.4(a) Limitation

> Local Delegates shall have no legislative, regulatory, or oversight power under this Charter.

This is clear. The Representative is the only legislator in the district.

> Local Delegates may only be removed from office via impeachment or as otherwise provided in this Charter.

Even though they are part-time officials, they remain *elected* officials. The Charter defends their election in the same way it defends all other appointed and elected officials.

> Local Delegates are elected officials accountable to the constituents of their Subdistrict. No other official, elected or appointed, may interfere with a Local Delegate carrying out the mandated or authorized duties and responsibilities as outlined in this Charter. This does not confer criminal or civil immunity.

It also defends the execution of their duties from interference. They aren't a novelty; they are necessary and functioning officials.

Article II, Section 8.B.4(b) Purpose of Office

> The Local Delegate is the primary conduit for communication between the constituents of the Subdistrict and the Representative for the District. They shall do so by:
>
> 1. Hearing constituent concerns and relaying them to the Representative.
> 2. Reporting those concerns to the full Congress annually.
> 3. Reporting the actions and voting record of the Representative back to the constituents.
> 4. Facilitating constituent engagement meetings between the Representative and the constituents of the Subdistrict.

> Nothing in this provision restricts a Representative from communicating directly with constituents.

And, finally, here's what the Local Delegates are intended to do and how. They aren't decorative; they have a mandated purpose. They are the Representative's ears *and* the mouthpiece of their constituents. Not only that, but they are required to report to the full Congress, not just the district's Representative, once per year.

Article II, Section 8.B.4(c). Explicit Duties

*Article II, Section 8.B.4($c_1$). Public Scheduling*

> The Local Delegate's schedule for workdays must be public. It must reflect the names of individuals with whom they are meeting, as recorded on voter rolls. Subjects may remain confidential. Delegates may not anonymize, obscure, or omit this information. Any meeting that does not meet these requirements is legally prohibited.

Transparency is a recurring theme in this Charter. That includes the Local Delegates.

*Article II, Section 8.B.4($c_2$). Required and Allowed Constituent Meetings*

> Local Delegates are responsible for accepting meetings from voters who live in the Subdistrict. Voters may bring assistants to such meetings when necessary for reasonable accommodation of disability. Local Delegates are prohibited from accepting meetings from associations of any kind.

This is vital. The Local Delegates are required to hold meetings with constituents. That means constituents as individuals. They're prohibited from meeting with organizations. Anyone they meet with must be a voter from the subdistrict. No outside influencers. Just the regular people.

*Article II, Section 8.B.4($c_3$). Acceptance of Impeachment Petitions and Ethics Complaints*

> Constituents may submit impeachment petitions directly to their Representative, but they may also present them to their Local Delegate. When they do so, the Local Delegate must accept it and relay it to their Representative within twenty-four hours.

Submitting a petition to impeach the Secretary of State, or something similar, is one thing. But what about a petition directed at the Representative for the district? Or what about a political ally of that Representative? Sure, the law requires the Representative to convey that petition to Congress, but how do we ensure that?

The answer is that we don't. Instead, we create an alternative pathway. That pathway is through the Local Delegate.

> Similarly, constituents may submit Ethics Complaints against their Representative to the Local Delegate. In such cases, the Local Delegate must relay the complaint to the House Ethics Panel by the end of the next legislative day on which Congress is not adjourned.

Local delegates are empowered to submit ethics complaints.[4] They can do so on their own behalf if the Representative is recalcitrant. But they can also accept petitions from constituents and submit them. This is a key democratic gateway for the congressional ethics architecture in the Charter.

[4] *See* **National Charter of the United States** (unratified), Article II, Section 2.A.3. Ethics Investigations.

*Article II, Section 8.B.4($c_4$). Periodic Reporting to the Representative*

> Each Local Delegate is required to present constituent concerns to their Representative quarterly. The Representative may additionally request a presentation summarizing this report.

This is the Local Delegate's core responsibility. They must meet with the Representative at least quarterly. This is where the Local Delegate becomes kind of a pain in the neck for the Representative. That's by design. The Representative can't argue that they were ignorant of constituent opinion. This is how the Charter solves the problem of keeping the Representative close to the people at scale.

The Representative could request a presentation, but it's important to note that the language says "additionally," not "alternatively." The idea is that the Representative may want a presentation to help discuss their constituents' concerns when they return to their chamber. It isn't a mechanism to avoid a meeting with the Local Delegate.

> A Delegate can request additional meetings with their Representative as needed. The Representative may accommodate other obligations, but must consider both their own and the Delegate's schedules. The Representative must provide an opportunity to meet within fifteen (15) legislative days. If three or more Delegates submit a joint request, the Representative must schedule a meeting within five (5) legislative days.

Local Delegates aren't limited to once-per-quarter meetings. And multiple Local Delegates within the district requesting a meeting in concert increases the urgency for that meeting.

Meetings may be conducted in person or virtually, but all such meetings, including all remarks, documents, and other relevant material, must be a part of the public record.

Asking part-time officials to be constrained to in-person meetings every single time is unreasonable. But transparency isn't.

*Article II, Section 8.B.4($c_5$). Constituent Engagement*

Local Delegates are responsible for coordinating town halls or community meetings with the Representative, whether individually or with other Subdistricts, as required in Article II, Section 5.F.2.

Local Delegates, who are independent elected officials, are responsible for coordinating the required town hall meetings. Why is this a salient point? It is a small hedge against Representatives who might, in a defensive move, schedule those meetings in ways that make it difficult for constituents to attend. Or maybe the instinct is not publicize those meetings very lightly or selectively to attempt to control turnout. The Local Delegates would likely push back against those baser instincts.

If three or more Local Delegates object that the meetings are not accessible to their Subdistrict's constituents, the Representative must reschedule to accommodate their needs or schedule additional meetings. For this provision, "accessible to their Subdistrict" does not mean that the meeting must occur within the Subdistrict. It means that the meeting must not place an unreasonable burden on constituents to attend.

This is important. In effect, Local Delegates acting in concert can impose a *de facto* veto on the place or time of a meeting, to better meet constituent needs. They function as a check on the Representative and their staff.

> The rules and format of all constituent meetings are negotiated between the Local Delegates whose Subdistricts are affected. The Representative must comply with the format and rules.

The importance of this provision shouldn't be ignored. Representatives have been known to stall and take questions only at the end of lengthy remarks, then lean on the tired excuse that, "We tried to take questions, but we ran short on time." They don't get to decide that, the Local Delegates do.

*Article II, Section 8.B.4($c_6$). Reporting to the Constituency*

> Between ninety (90) and one hundred eighty (180) days before the end of each congressional term, the Local Delegate must hold no fewer than four public meetings for constituents of the Subdistrict. These meetings must be held on various days of the week and multiple times of day.
>
> At these meetings, the Local Delegate must report to constituents on their Representative's legislative record. This report shall include all bills sponsored or co-sponsored, all public votes, all authorized travel, and any major policy statements or speeches.

This is an extremely important measure. In general, it's useful to have a coherent recap of the Representative's record during the term. That's just general civic hygiene.

But there's a second and more important reason this is important. The timing is set so that this meeting happens *before* the next election. If the Representative is running for election or for another office, this is a moment of truth that refocuses constituent attention on the entire term, not just the most recent few months.

# ARTICLE III – THE EXECUTIVE BRANCH

## Article III, Section 1 – General Provisions of the Executive

> The People delegate executive power to a President of the United States. Alongside the President, there is an assistant called the Vice President of the United States.

Following the model of Article II, this passage makes clear that the Executive's power is a delegation from the people, not an inherent power. In other words, the President doesn't have power because they are the President. They are the President because we chose to delegate certain powers to an office which we call the President.

It also affirms the Vice President's office as an assistant to the President. Some will be shocked that I call the Vice President a mere "assistant." In that, I lean on my betters.

> "I am vice president. In this I am nothing, but I may be everything." – *John Adams*
>
> "I do not propose to be buried until I am dead." – *Daniel Webster, when he declined the Vice Presidency.*
>
> "The vice president has two duties. One is to inquire daily as to the health of the president, and the other is to attend the funerals of Third World dictators. And neither of those do I find an enjoyable exercise." – *attributed to John McCain*[1]

[1] The exact provenance and wording of this quote varies, but the tone is consistent with the late Senator, and given that his career (and so also this quote) is in living memory, if he had *not* said it, there would likely be evidence to that effect. In fact, given his outspoken nature and characteristic irascible humor, that denial would likely have come directly from him.

## Article III, Section 1.A. Election and Qualifications

### *Article III, Section 1.A.1. Terms*

> The President and Vice President serve concurrent four-year terms, which can each be renewed once, and the total number of years permitted in each office is ten years, whether served consecutively or not.

There has been debate recently about the meaning of the Presidential and Vice Presidential terms, both in the Constitution of 1789's original text[2] and in the Twenty-Second Amendment.[3]

Regardless of whether you hold to the traditional view that the Twenty-Second Amendment was put in place following Franklin D. Roosevelt's four terms to set an absolute limit, or to the more novel view that non-consecutive terms aren't affected by this limitation, the language in *this* Charter is clear. The President and Vice President can serve in those respective offices for two terms plus two years. Period. End of story.

George Washington set a good example by leaving office after two terms. It may have been the most important thing he ever did. He, as the leader of a sovereign nation, *chose* to relinquish power.

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[2] **Constitution of 1789**, Article II, Section 1: "The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term…."

[3] **Ibid.,** Amendment XXII, Section 1: "No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this Article shall not apply to any person holding the office of President when this Article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this Article becomes operative from holding the office of President or acting as President during the remainder of such term."

Most Americans believe he did the right thing.[4]

[4] I don't have polling to back that up. I don't need it. The debate surrounding FDR's unprecedented four elections was loud. The debate surrounding the current President and claims that he could serve beyond two terms because they aren't consecutive is illustrative. The fact that the debate exists is the proof. And more normatively, it can be argued that the fall of the Roman Republic came with Marius's unprecedented seven terms as Consul. That is a cautionary tale.

### *Article III, Section 1.A.2. Election and Qualifications*

Article III, Section 1.A.2(a). Election

> The President and Vice President are elected independently from one another. Neither Congress nor any other body has the power to join the Presidential and Vice Presidential ballots in any way. A Presidential candidate may not declare a Vice Presidential running mate. Both offices are elected by a popular vote of the People, held during the usual Federal Election and settled by acceptance voting.

"What!?"

That's right. No running mates. The people vote independently for the President and for the Vice President. AND both elections are settled via acceptance voting,[5] not an Electoral College. That means you can vote for *all* the candidates you like for President and for *all* the candidates you like for Vice President, and the highest vote-getter in each race wins.

No more need for partisan primaries, folks. Iowa and New Hampshire account for slightly over one-half of one percent of the United States population, yet they get to eliminate so many candidates so early. By the time Super Tuesday arrives, many candidates have dropped out. That's unfair. Not unfair to the candidates (well, it is, but that's less important), but to the voters in the states that vote later.

Let's have real Federal Elections for President and Vice President.

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[5] *See* **National Charter of the United States** (unratified), Article VI, Section 1.A.6. Acceptance Voting.

Now let's talk about the elephant and donkey in the room.

The elimination of the Electoral College ends the illusion of Red States and Blue States. The media, in their election coverage of Presidential elections, historically used an electoral college map. And since the two major parties control the realistic likely victors, the media colored the map with one party red and the other blue (because it looks patriotic – red, white, and blue, right?). In the 2000 election and the heated recount battles that followed, everyone settled on the colors used that year: Red for Republicans and Blue for Democrats.

Our opinions about who should be President became our identities. Those identities became party affiliation. Party affiliation became tribalism. All because of one map and the Electoral College.[6]

But that's dumb. I want to buy affordable groceries, have education programs for my kids, and live in relative security. I'm pretty sure every single other American wants those things, too.

How are electoral votes divvied up? One elector per Representative and one per Senator. That means smaller states have an outsized voice *per voter* in selecting a President compared to more populous states.

"Huh?" Here's how it works. We'll look at Iowa and California for this example, but the math is the math, so you could compare any relatively low population state to any higher population state and still find an inequality. Iowa has 6 electoral votes for a population of

[6] A critic will accuse me of collapsing a lot of social and political debate into one map. I am. But that collapse is shorthand, not revision.

around 3.2 million. That's one electoral vote for roughly every 533,000 people. By contrast, California has a whopping 54 electoral votes, but that's for a population of around 39 million. That works out to about one electoral vote for every 720,000 people. In other words, an individual Iowa voter has roughly 1.35 times the influence in the Presidential election as their cousin in California.[7]

Most states also rely on a "winner-take-all" model. That means a Republican in Massachusetts may as well not even vote for President. All 11 electoral votes are going to the Democratic candidate anyway.

Rural states are crying loudly (I can hear you) that "But our voices will be drowned out by the populous states!"

Representation in the Senate remains *unchanged*. True, the Senate is smaller,[8] but representation within the Senate is equal between the states. The less populous states will *still* have an outsized voice in our national politics. Their interests will be well represented. They just don't get to override the rest of the country in electing a President and Vice President.

Article III, Section 1.A.2(b). Qualifications

| Both the President and the Vice President must: |
| --- |

[7] The math isn't perfect. It assumes that the proportion of voters to the general population is the same in both states, which may not be perfectly true, but it is likely close to the same. It's certainly close enough to the same to make my point.

[8] *See* **National Charter of the United States** (unratified), Article II, Section 6.B.1. Allocation. *In this Charter, each state receives one Senator, not two. But their votes remain equal within the Senate, so the less populous states retain their loud voice in that body.*

1. Be natural born Citizens, that is, they must be citizens by virtue of being born within the territory of the United States or to at least one parent who was a Citizen of the United States at the time of the candidate's birth;
2. Be at least thirty-five, and no older than sixty-five;
3. Not be a convicted felon, even if pardoned; and
4. Be a resident of the United States for fourteen years, at least ten of which must be contiguous to the beginning of their term of office.

What has to be true for someone to be able to run for President (or VP)?

Let's dive into these.

**Natural Born Citizenship**

The first requirement isn't new. The Constitution of 1789 required that the President be a natural-born citizen (despite never defining who a citizen was).[9]

The major key difference here isn't the basic requirement. It is the careful definition of "natural-born Citizens." Controversy swirled around all of the following figures and their eligibility for office:

- Chester A. Arthur (father wasn't a citizen when little Chester was born)
- Barry Goldwater (born in Arizona, but before it became a state)

9 **Constitution of 1789,** Article II, Section 1, Clause 5. "No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President…."

- George Romney (born to American citizens, but in Mexico)
- John McCain (born in the Panama Canal Zone to American citizen parents)
- Ted Cruz (Born in Canada with only one parent a citizen at the time of his birth)

There was also the "birther" controversy regarding Barack Obama, with false claims that he was born outside the U.S., but that was an unfounded conspiracy theory based, in my opinion, on racism, not law.

This isn't an academic problem. It keeps coming up. So the definition of natural-born Citizens is supplied. Let's look at the elements of it. If they were born within the territory of the United States, they are natural born. That means Connecticut, Puerto Rico, or Guam are all equally valid birthplaces for the purposes of this sub-clause. This is *jus soli*, that is, "Right of Soil."

It also affirms natural born status for anyone born of *at least one* parent who is a U.S. Citizen when the person in question is born. This is *jus sanguinis,* or "Right of Blood." This is to close the door on the minority view originating with Emer de Vattel in *The Law of Nations* that *both* parents must be citizens for *jus sanguinis* to apply. It hasn't been, and isn't currently, a majority view in legal interpretation of the question, but this clarifies that only one parent need be a citizen if a child is born overseas. It may not be the majority view, but the fact that the question was raised for Ted Cruz shows the question remained open.

**Age Requirements**

The second requirement sets age floors and ceilings for eligibility. The thirty-five-year-old floor is the same as that in the Constitution of 1789.[10] However, that document has no upper limit for the Presidency. Americans are living longer, and there have been at least two cases of sitting Presidents with dementia or cognitive decline. While it is a medical fact that dementia and cognitive decline can happen at any age, it is also a fact that advanced age carries a much higher risk for it. Data show a demonstrable increase in the incidence of Alzheimer's Disease beginning around age sixty-five.[11] That reality is the sole reason for the age limit on the President. This will certainly prevent able people from seeking the office (if the election were held today, I'd only be eligible to run for one term), but it is a prudent means of ensuring that the President can discharge the duties of the office.

So, what about ageism, here? First, very little, if any, debate has *ever* raged about the thirty-five-year lower limit. That means that, as a society, we understand that a lack of life experience is a detriment for a national leader. How is it any different from an argument to then claim that the factual higher risk of dementia is also a detriment? Both limits are tied to known age-related risks. The first limit considers inexperience, and the second, advanced age.

## Legal Character

The third requirement is that a President or Vice President can't be a felon.

[10] **Constitution of 1789,** Article II, Section 1, Clause 5: "…neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years…."
[11] **Alzheimer's Association**, *2025 Alzheimer's Disease Facts and Figures*. *Alzheimer's & Dementia*, (2025). Available from: https://www.alz.org/alzheimers-dementia/facts-figures. Last visited by the commentary's author in October 2025.

"But what if they're pardoned? That means they weren't guilty." No, it doesn't. It means they were convicted, but a governor or president said, "I'll let you off the hook." That's not the same thing. Not by a long shot. Legally, they remain a convicted felon.

Note that this isn't for misdemeanors. It isn't for people who've been sued and lost. This is about felons. It's about people who committed serious crimes and were found guilty by a jury of their peers according to a standard of "beyond a reasonable doubt." This isn't a capricious standard. It's a bright line; if you can't follow the biggest laws, how can you be trusted to faithfully execute them?

"Sometimes convictions are overturned." That's correct. But when a conviction is vacated, the person is no longer considered guilty. This prohibition wouldn't apply because they literally aren't felons.

"It was a long time ago." Yeah, some things can't go away. Not for the Presidency. Members of Congress have a mechanism that allows them to stand for office despite a felony conviction.[12] Given the extraordinary power and trust delegated to the President, that route can't be open to them. There's entirely too much opportunity to commit felonies on an unimaginable scale.

**Residency**

The Charter requires that the President be a resident of the U.S. for at least 14 years, of which at least 10 must have been immediately before taking office.

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[12] *See* **National Charter of the United States** (unratified), Article II, Section 1.A. General Eligibility.

The Constitution of 1789 requires the President to be a resident of the United States for fourteen years.[13] The idea was that natural citizenship and long-term residency would combine to protect against a foreign dark-horse candidacy.

It's advisable for the President to live with and understand the political culture of the U.S. So, to that end, the language here mirrors that of the Constitution of 1789, but it adds a requirement that at least ten years of their residence in the U.S. must be immediately before taking office. Is it perfect? Does it absolutely eliminate any chance of a groomed foreign actor? No. But it's pretty strong without being so restrictive that diplomats, their children, or members of the Armed Forces wind up disqualified.

[13] **Constitution of 1789,** Article II, Section 1, Clause 5: "and been fourteen Years a Resident within the United States."

Article III, Section 1.A.2(c). Loss of Office by Disqualification

> If the President or Vice President becomes ineligible to hold office because one of these qualifications is no longer met, they are summarily removed from office, without the need for impeachment or other mechanism. Refusal to vacate the office under such circumstances constitutes Treason.

There's a gray zone that hasn't ever been adequately addressed. You probably haven't thought about it, and thinking about it *is* scary. What happens when the President is no longer qualified? What happens when the President is required to leave office but refuses? Those two questions are nightmare fuel.

If the President becomes too old or is convicted of a felony, they are immediately removed from office. Period. They don't have to be impeached. There's no need for a court hearing. How could someone plead that they're not over 65? And they were either convicted of a felony or were not. Appeals may reverse that conviction, but until they do, the convict is ineligible to be President.

If either the President or Vice President refuses to vacate the office under these conditions, they are committing Treason. That's backed up in the constitutional definition of Treason in this Charter.[14]

[14] *See* **National Charter of the United States** (unratified), Article IV, Section 7.A. Treason.

***Article III, Section 1.A.3. Alternative Selection of the Vice President***

> In the event no candidate elects to run for the Vice Presidency, the following Officers shall assume the Vice Presidency, in order of priority and fitness for service.
>
> 1. The current or most recent Leader of the Senate
> 2. The current or most recent Speaker of the House of Representatives
> 3. The current or most recent Deputy Leader of the Senate
> 4. The current or most recent Vice Speaker of the House of Representatives

I hope there are enough civically minded people willing to run for Vice President.

I hope that, but I'm not a fool. Under this Charter, the Vice Presidency has minimal power and is structurally severed from the Presidency. It is unlikely to serve to anoint a successor for a President who has completed their two terms of office. The President and Vice President might not agree with one another.

That makes the office less attractive than it is under the Constitution of 1789. There is a real chance no one will want to run for Vice President. Just in case that failure mode is exposed, the Charter offers us this clause. It selects a Vice President when no one runs for the office. And it does so from within the Presidential succession chain.

## Article III, Section 1.B. Vacancies and Succession

### *Article III, Section 1.B.1. General Presidential Succession*

> If the President dies, resigns, is removed from office, or is unable to discharge the powers and duties of the Presidency, those powers and responsibilities pass to the Vice President. Dependent on other details of this provision, this may be a temporary or permanent transfer. Should the same circumstances extend to the Vice President, then succession descends to the Leader of the Senate, then to the Speaker of the House of Representatives. Congress may designate succession beyond the Speaker, but must ensure that all Persons in the line of succession otherwise meet the qualifications and requirements of the Presidency.

This is the line of succession for the Presidency, and it's pretty straightforward. It does allow Congress to flesh out the steps of succession after the third degree, but requires anyone in the succession plan to be eligible for the Presidency (which should be common sense).

I'd like to point out that it *is* slightly different than the line of succession today. According to the Constitution of 1789, the Vice President succeeds the President.[15] The rest of the succession is left to Congress.[16] That body has done exactly that, and the full succession

[15] **Constitution of 1789,** Article II, Section 1, Clause 6: "In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve upon the Vice President…."
[16] **Ibid.,** Article II, Section 1, Clause 6 (continued): "…and the Congress may by law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as president and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected."

under that framework proceeds from the Vice President to the Speaker of the House, then to the President pro tempore of the Senate, then on through the Cabinet.[17]

But under this Charter, there is no President pro tempore of the Senate. Instead, there is the position of Leader of the Senate. Under the old order, the Vice President was *both* Vice President *and* President of the Senate (the upper chamber of Congress), but under this Charter, they are not. For those reasons, the flow is:

Senior Executive (President) ➔ Junior Executive (Vice President) ➔ Presiding Official, Upper Chamber of Legislature (Senate Leader) ➔ Presiding Official, Lower Chamber of Legislature (Speaker of the House) ➔ Other designees, as Congress enshrines in law.

***Article III, Section 1.B.2. Vice Presidential Succession***

> If the Vice President resigns or is required to permanently assume the Presidency, or at any other time the office of the Vice Presidency shall become vacant, the Leader of the Senate will fill the Vice Presidency for the remainder of the existing term, resigning from the Senate, and the Senate will elect a new Leader according to the rules of that body.

This is wholly innovative, even though it looks like dull, gray proceduralism. Here's what's different: under the Twenty-Fifth Amendment, when there is a vacancy in the Vice Presidency, the President appoints a replacement subject to confirmation by both houses of

[17] **Presidential Succession Act of 1947,** published in **Volume 61, United States Statutes at Large,** beginning at page 380. This reflects the law as originally enacted by Congress, before any portions were later reorganized or codified into the United States Code.

Congress.[18] Instead, here the Senate Leader is promoted,[19] and a new Senate Leader is elected.

Why the change? It prevents even the *appearance* of political patronage. That may seem a small matter in the abstract, as a thought experiment. It becomes less so in the heat of a political moment.[20]

> If the President is temporarily incapacitated, the Vice President assumes the duties of the Presidency until the President can resume their regular duties.

There's always somebody looking for a loophole. I don't even think it's usually malicious. I think that we, as the American people, just really like to argue. Whether that's true or not, this language simply serves to highlight that the Vice President can *temporarily* assume the duties of the President when necessary. It shuts the door on any claim that the Vice President *can't* assume powers on a temporary basis.

### *Article, III, Section 1.B.3. Incapacity*

People *will* argue with me on this clause. I want to acknowledge their good faith upfront. This is a difficult issue with broad implications, regardless of the solution arrived at.

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[18] **Constitution of 1789,** Amendment XXV, Section 2.

[19] At least it's a promotion if you're not Grace Coolidge. "You're not going to take it, are you?" – to her husband Calvin upon his nomination for Vice President in 1920.

[20] To illustrate this point, consider the so-called "Corrupt Bargain." In the election of 1824, there were four serious candidates for the Presidency (it was a different political system at the time than our current two-party dominance): Andrew Jackson, John Quincy Adams, William H. Crawford, and Henry Clay (who was the Speaker of the House). Since there was no outright majority in the Electoral College, this triggered a contingent election in the House of Representatives (*see* **Constitution of 1789,** Amendment XII), but Clay was excluded because he was not in the top three. He threw his weight behind Adams, and his influence put the younger Adams into the White House. Adams subsequently appointed Clay as his Secretary of State. History at the time meant that he effectively anointed Clay as his successor, since Jefferson, Madison, Monroe, and Adams himself had all served as Secretary of State before becoming President. Whether or not there was a *quid pro quo* is irrelevant to my point, which is that it created the *appearance* of one (hence the name – "Corrupt Bargain"). That's corrosive.

Article III, Section 1.B.3(a). Adjudication of Incapacity

> A President or Vice President must be judged incapacitated any time they are under general anesthesia.

First, and I doubt anyone will argue with this, whenever the President or Vice President is subject to general anesthesia, they are incapacitated. As I said, I doubt that it requires debate.

> Additionally, they may be so judged on a written and sworn declaration by two attending physicians in whose medical opinion the officeholder is unable to carry out the duties of the office.

This is what will spark (most likely heated) debate. At the core of the issue is this: who decides when a President or Vice President is medically incapacitated? This is a fraught and sensitive question.

So, let's look at what the needs are:

1. We need a way, independent of a potentially recalcitrant officeholder's subjective opinion, to determine when they are unable to carry out their duties.
2. We need that determination to have some mechanism for review, or at least agreement.
3. We need a way to decide if the incapacity is permanent or temporary.
4. Finally, we need a way, if it is temporary, to decide when the officeholder is again fit for duty.

The Twenty-Fifth Amendment tries to thread this needle, but it is so overwrought *and* dependent upon appointees that it's functionally useless.

First, in the first case, it relies on the subjective judgment of the President that they are fit for duty. Every single adult American, probably everyone over the age of fifteen worldwide, has encountered someone in their life who insisted they were "ok" when they weren't. Often, unfortunate consequences resulted. Self-assessment of capacity to carry out one's own duties is fraught at best.

Second, to overrule the President, both the Vice President *and* a majority of the Cabinet must agree and provide a written declaration to Congress stating that they don't believe the President is fit for duty. *Then* Congress has to vote by a two-thirds majority to agree that the President can't carry out their duties.

Now, I'll ask you. What is the likelihood, even when justified, that all those factors work as intended? Half of the Cabinet agrees? Seriously? Are you going to argue that a third of Congress couldn't be persuaded that this is a partisan exercise? "It's an attempted coup!" That's the exact line that would be thrown around.

Third, the Twenty-Fifth Amendment only addresses the President. What about the Vice President?

So, if not politicians, then who? There is a profession whose very *job* is, in part, to make assessments about people's capacity to function under various medical infirmities – doctors. If two of the officeholder's doctors agree, in writing, that the officeholder is incapacitated, that is and should be enough. It isn't a single person's decision. It also isn't open to lengthy political litigation while the nation wonders who is in charge and whether they are competent.

So, what does that declaration look like?

*Article III, Section 1.B.3($a_1$). Declaration of Incapacity*

> A medical Declaration of Incapacity must be issued publicly and list the nature of the incapacity, with the identities of the two attending physicians so attesting. If the declaration indicates a permanent incapacity, the officeholder is removed from office.

First of all, the declaration *has* to be public. No, "I have here in my hand,"[21] moments. The doctors must make their declaration public and identify themselves for accountability.

Those doctors also make the call regarding whether incapacity is temporary or permanent.

*Article III, Section 1.B.3($a_2$). Declaration of Restored Capacity*

> In the case of temporary incapacity, the capacity shall be considered restored upon sworn issuance of a Declaration of Restored Capacity by two attending physicians. The Declaration must list the physicians' identities and clearly explain why and how the incapacity has been resolved.

So, what if the incapacity *is* temporary (as it most likely will be)? How do the American people know when their elected President can resume their duties? The answer is the same as it was for incapacity in the first place. Two attending physicians make a declaration. I'd like to point out that this can't be a hand wave. They have to explain why the President or

[21] Senator (if he can be considered worthy of the title) Joseph McCarthy declared in a speech in Wheeling West Virginia "The State Department is infested with Communitsts. I have here in my hand a list of 205...." He never produced that list, though he regurgitated suspicions, rumors, and accusations of various credibility. That wasn't about medical incapacity, but neither is the limitation in this public disclosure requirement. It's about accountability. He wasn't accountable. Anyone declaring the President or Vice President medically incapacitated must be.

VP is no longer incapacitated. Simply saying, “Oh, they’re good now,” won’t cut it. The reason for that is that, especially for the President, it’s likely that there will be pressure to get a Declaration of Restored Capacity. Simply wanting it isn’t enough, though. The American people deserve a demonstration that the incapacity has passed.

Now, so far, we’ve relied on “two attending physicians.” Great. That seems reasonable. No decision of this importance should be made by a single person.

But wait...how is that defined?

Article III, Section 1.B.3(b). Attending Physicians

> For the purposes of this provision, the two attending physicians shall consist of the principal’s primary physician, if immediately available, and one other senior physician actively treating or assessing the principal for the condition causing the incapacity. If the principal’s primary physician is not immediately available, the second physician must be another senior physician similarly treating or assessing the principal.

This is a little tricky, so let’s walk through it carefully.

Under anything approaching otherwise normal circumstances, the two physicians are the President’s or VP’s primary doctor, plus one other doctor who is senior (*i.e.,* in a position of leadership) and actively involved in either caring for the principal or, at a minimum, assessing their condition. That’s pretty clear.

What happens, though, when the need arises away from the White House physician? Then the second doctor must meet the same requirements as the first.

Ok, so all of this is for acute circumstances: surgeries, treatment after accidents or assassination attempts, and so on.

What about equally grave, but less immediate circumstances? Diagnoses of dementia or cancer? No one wants to think about that, but they aren't fantasy. They could really happen. How should we handle those situations? How do we even know about them?

And what about a President or Vice President who simply refuses treatment or assessment?

Article III, Section 1.B.3(c). Refusal of Treatment and Periodic Examination

> The President or Vice President in question is not permitted to deny treatment or assessment if injured, wounded, or apparently infirm. Additionally, these principals must undergo rigorous physical and cognitive evaluations in January and July, while in office, to assess their fitness to carry out the duties of office.

In 1912, Teddy Roosevelt was shot in the chest, but he gave his stump speech before seeking treatment. He wasn't president at the time, but that occurrence is instructive here. Had he been President, that behavior would have been grossly irresponsible, rather than merely foolhardy. He would have been endangering the operation of the highest executive office in the land.

But his actions prove that people can be bull-headed.[22] How do we protect our Republic from foolish obstinacy? We make acceptance of treatment a condition of office.

What's more, we need a mechanism to identify additional hidden, chronic maladies that could be affecting the President or the VP. To do that, we require them to undergo a mandatory physical and cognitive examination twice a year. Again, this is a condition of office.

You could argue that this interferes with their right to Bodily Autonomy.[23] That objection is off-the-mark, though. Why? Because holding office isn't compulsory. They entered into it knowing the requirements.

The President has the capability to launch nuclear weapons. So does the commander of a naval group. The process laid out here for the President and Vice President is not substantively different than that for a naval commander. Just like the naval commander, a President or Vice President has the capability to unleash catastrophe; that's why immediate, transparent medical decision-making is the right call, here.

### *Article III, Section 1.B.4. Inability to Perform Duties*

> Outside of medical incapacity, the inability to perform duties is defined as circumstances that physically prevent the execution of official duties or conditions of duress.

[22] In fact, he quipped that it would take more than that to kill a Bull Moose (he was the candidate for the Bull Moose Party).
[23] *See* **National Charter of the United States** (unratified), Article I, Section 2.B.2(b). Right to Bodily Autonomy.

This clause is really just to close any remaining loopholes. Given the security and technology surrounding the President and the Vice President, these scenarios seem unlikely, but this statement is simple enough to cover them.

### Article III, Section 1.C. Assumption of Office

#### *Article III, Section 1.C.1. General Assumption of Office*

> The President-elect becomes the President at 12:01 p.m. in the Nation's Capital on January 20th in the year following the Presidential election. The Vice President-elect takes office at the same time.

You might be thinking this is dull. Maybe you're even wondering why this is in the Charter, rather than in a regular statute. Just like the one before it, this entire subsection helps secure continuity of government, and this clause is the first step of that.

There's a really good reason why it's encoded in constitutional language. The weakest point of any democratic or parliamentary republic is the moment when power transfers to a new government. Since this Charter, like the Constitution of 1789 before it, establishes a democratic republic, that weak point applies to our government.

This clause locks in *the timing of the transfer of power, which remains* effectively unchanged.[24] It simply constitutionalizes existing law.

[24] The precise wording is a little bit different, but the general mechanic is the same: the new President takes office at noon on the 20th of January.

### *Article III, Section 1.C.2. Succession for Presidents and Vice Presidents-Elect*

> If either dies or becomes incapable of carrying out the duties of the office before taking office, the same succession rules apply as if they had died while serving, except that the Vice President-elect is the successor of the President-elect.

Explicit rules about who is in power precisely when strengthen the weak point. But what about when the person or people who are supposed to take office die before they can do it? We're lucky that it hasn't been a scenario we've had to face. Good luck doesn't excuse complacency, though.

The Twentieth Amendment resolves this for the Constitution of 1789.[25] Luckily, this scenario has never been a concern. Let's not let that good fortune lull us into being foolish. The clause explicitly ties the succession rules for a President-elect to those of a President. Same for a Vice President. By naming the Vice President-elect as the explicit successor of the President-elect, any ambiguities or loopholes allowing the previous officeholder to remain are foreclosed. The circle is closed and secure.

This may be a scenario that has never materialized, but it isn't unimaginable. In 1968, Robert F. Kennedy, Sr., was running for the Democratic presidential nomination. Fresh off an exhilarating victory in the California primary, he was shot and killed in the Ambassador Hotel. It doesn't take a big stretch of imagination to see how that could have been a freshly victorious President-elect, rather than a candidate for the nomination.

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[25] **Constitution of 1789,** Amendment XX, Section 3.

***Article III, Section 1.C.3. Oath of Office***

> Before any Person permanently assumes the office of President or Vice President, they must swear or affirm:
> "I (full legal name) solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States (or Vice President), and will to the best of my Ability, preserve, protect, and defend the National Charter of the United States and remain true to its central tenet that the People are the Sovereign Power. I understand and affirm that I hold this office and exercise the powers, duties, and privileges it requires and grants only because the People have delegated those things to me."

We made members of Congress swear an oath. The President and Vice President don't get off the hook, either. Remember, an oath of office is legally binding, not ceremonial, according to the terms of this Charter.[26]

> The Chief Justice of the Supreme Court must publicly administer this oath or affirmation. If the Chief Justice is unable to do so, the most senior Associate Justice shall do so, then the most senior Appellate Court Judge, as determined by tenure, then by age.

"Why so much procedural detail, Gary?"

Because we've seen, in living memory, the ridiculous lengths a motivated opposition might go to in order to deny legitimacy to a President they don't like. On January 20, 2009, John

[26] *See* **National Charter of the United States** (unratified), Article IV, Section 7.D. Failure to Uphold Oath of Office.

Roberts stumbled on the word order of the Presidential Oath during the inauguration of Barack Obama. Obama repeated the incorrect word order. While serious legal opinion didn't question the validity of the oath as administered, a tempest in a teapot raged loudly enough that Roberts readministered the oath the following day, this time with the corrected word order.

Given that history, it's not hard to imagine a scenario where the Chief Justice has a serious illness (January 20 is during flu season, after all), and isn't able to attend the inauguration. Suddenly, we have a needless constitutional crisis. These details may seem trivial, but they prevent a nightmare from arising over mundane causes.

# Article III, Section 2 – Duties of the President and Vice President

## Article III, Section 2.A. Duties and Powers of the President

### *Article III, Section 2.A.1. Commander-in-Chief*

The President is the Commander-in-Chief of all nationalized military forces in the United States. The office has the emergency power to immediately and actively engage the military in a defensive capacity to protect the People, territories, bases, embassies, consulates, and vessels of the United States in instances of credible and imminent military, terrorist, or cyber attacks.

The most basic function of a government is to preserve the life and bodily autonomy of its people. That is, defending the nation and its people from attack.

To that end, the first duty of the President is to be the Commander-in-Chief of the Armed Forces. The language is careful, though. A careful read will notice the word "nationalized" in this sentence. In this context, it means all of the United States' federal active-duty and reserve forces, but only those National Guard units and personnel who have been legally nationalized. The President doesn't have authority over the National Guard under most conditions.[1]

The Charter will, in later parts of this subclause, limit the President's war powers.

[1] *See* **National Charter of the United States** (unratified), Article V, Section 8 – The National Guard.

But right here, right now, notice that they are not constrained in the use of the military to defend the American people against an attack.

They can *immediately* act to protect the American people and/or their territories, ships, military bases, and diplomatic facilities *without* any other considerations or approvals. The only element that is necessary is an imminent and credible threat of attack against us. Even that, though not unlimited in scope, is defined broadly.

The next portion of this subclause will have limitations, but it is important that the first words about the President's duty to act as Commander-in-Chief are unfettered command to defend our people. No permission slip required.

All other use of military force requires that the President either:

1. In cases requiring immediate and covert action in the interest of National Security, inform a Use of Force Advisory Council, made up of the Vice President, the Chief Justice of the Supreme Court, the Leader of the Senate, the Speaker of the House, the Secretary of State, and the Secretary of Defense, plus one additional Senator and one additional Representative, chosen by total tenure in Congress, then age, then alphabetical order of surname, of the need and intention to take action. The assembled Advisory Council must assent, by a three-quarters majority, to the use of military force. The minutes and votes of the meeting are classified, but must be recorded and released in full, according to the transparency provisions of this Charter, at the appropriate time, or sooner at the President's discretion; or

2. Receive a fully executed Declaration of War from Congress, or after an attack which creates a *de facto* State of War, both as outlined in Article II, Section 4.H of this Charter.

Here are the limitations. There's nothing here about "Manifest Destiny." No words about "falling dominoes." The President is the Commander-in-Chief but is still accountable in that capacity. We don't have a monarch. The President, whether with good or ill intent, can't engage in foreign adventurism.

Covert action may be necessary. Fine. Convene a council and convince them to agree with the rationale. The Council includes all three branches of the government – the judiciary to consider the legality, the legislature to speak for the states and the people, and the executive to give operational advice. And note the transparency requirement: the minutes and votes of the meeting are recorded but remain classified until the transparency provisions of this Charter take effect.[2]

It's common sense, but the Charter also gives the President the authority to act when Congress has formally declared war[3] or when the United States has been attacked, creating a State of War that doesn't require a formal declaration by Congress.

Under no circumstances may the President or other official of the United States command the Armed Forces of the United States to take action against the People, except as outlined in Article II, Section 4.H.1.

[2] *See* **National Charter of the United States** (unratified), Article VI, Section 3.C. Sunset Review and Declassification.
[3] *See* **Ibid.,** Article II, Section 4.H. Declarations of War.

This is the final bright line. The language is precise. Except in response to a rebellion that has *already attacked* the United States, the U.S. military is not to be deployed against our own people. The wording says "take action," which is intentionally broad. It absolutely, unequivocally, and without reservation is intended to mean no law enforcement or combat action.

### *Article III, Section 2.A.2. Head of State*

The President is the Head of State for the United States. That makes them the ceremonial leader of our country, but also its chief diplomat. So in that capacity, what can a President do?

Article III, Section 2.A.2(a). Diplomatic Agreements

*Article III, Section 2.A.2($a_1$). Unilateral Authority for Cessation of Hostilities*

> The President shall have the unilateral power to make cease-fire agreements, armistices, and truces involving the immediate use of military force by the United States. The President may not unilaterally make any agreements on behalf of the United States, except for these three categories.

On their own authority, a President can enter into three types of agreements: formally negotiated cease-fires, armistices, and truces. In other words, a President can pause or end hostilities short of a formal peace treaty. They need no oversight from Congress to do so. I assume anyone can see why this is important for the President to be able to do – ending violent conflict, even temporarily, is an executive decision, and delaying that for procedural games is immoral, to put it mildly.

*Article III, Section 2.A.2($a_2$). Limits on Executive Agreements*

> There is no justification for any assumption that the President or anyone acting on their authority may make so-called Executive Agreements without consulting the Senate. Such agreements are unauthorized. Any such agreements in place at the time of ratification of this Charter remain in force and are considered binding Treaties in law.

Agreements, even including peace treaties, that go beyond ending the immediate shooting and dying in a conflict aren't *only* the President's prerogative. They also belong to the Senate. The U.S. Senate can be...prickly. Presidents have found a workaround to the Senate: the so-called "executive agreement." Apparently, the logic is that renaming a duck a "flat-billed waterfowl" makes it no longer a duck.

Look, the Senate can be a pain in the ass. I said it. *That's their job,* in this scenario. Working around them is illegitimate. So, this Charter explicitly bans the workaround.

But what do we do about the executive agreements that have already been negotiated and are in place? It doesn't make sense internally or on the world stage to simply negate them at the ratification of this Charter. Instead, we recognize them for what they always really were: Treaties. And they get a pass on the whole "consent of the Senate" thing because that genie left the bottle long ago.

This status change is important. It isn't just a meaningless name change, like National Accounts rebranding itself "Strategic Accounts" at work. Recognizing these agreements as

treaties changes how we can withdraw from them,[4] and it defines how the courts are obligated to interpret them when they interact with other laws.[5]

*Article III, Section 2.A.2($a_3$). Treaties*

> By and with the advice and consent of the Senate, the President may also make treaties, provided two-thirds of the voting Senators consent. The President may withdraw from treaties, provided the treaty allows withdrawal, but only after receiving a two-thirds majority vote from the Senate to consent to the withdrawal.

Here it is. The President can negotiate treaties with the advice and consent of the Senate, and they can withdraw from treaties with Senatorial consent. The consent mechanism is reasonably clear (a little more on that to follow), but there is nothing explaining advice. "Advice and Consent" appears in the Constitution of 1789[6], too, but it has been relegated to Senate confirmation. Where did "Advice" go?

To be blunt, the one-and-only-time advice was sought did not end well. In 1789, President Washington, along with the Secretary of War, Henry Knox, presented proposed treaty terms to Congress with certain Indian nations. He expected a live consultation, but got bureaucratic and procedural hedging instead. Washington was, to put it mildly, frustrated. "The President started up in a violent fret. 'This defeats every purpose of my coming here, ' … he said….We waited for him to withdraw. He did so with a discontented air. Had it been

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[4] *See* **National Charter of the United States** (unratified), Article III, Section 2.A.2(a3). Treaties. *It's the very next paragraph after this one.*
[5] *See* **Ibid.,** Article IV, Section 5.A. Interpretational Precedence**,** *which prioritizes which laws are subordinate to others, including treaties, which are subordinate only to this Charter and to constitutionally relevant case law.*
[6] **Constitution of 1789,** Article II, Section 2, Clause 2: "He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur…."

any other man than the man whom I wish to regard as the first character in the world, I would have said, with sullen dignity."[7] Washington did eventually (the following Monday) get his debate and closed the matter, but going forward, he never repeated that process. Ever since that first attempt, the Senate has simply voted after the fact to consent or not.

But President Washington literally presided over the Philadelphia Convention. To say he didn't understand the "intent of the Framers" would be…well, let's say "farcical" for the sake of propriety. He tried to act as the delegates to that convention had intended when they framed the Constitution of 1789.

But Senatorial advice seems like such a good idea. The President should benefit from other perspectives when negotiating treaties. How can it be put into operation without devolving into the same ridiculous spectacle Washington encountered?

To obtain advice on treaty negotiations, the President must notify the Leader of the Senate, who will convene a randomly chosen advisory group of five Senators. The group will confer confidentially with the President to define broad negotiation guidelines, which will be sealed and recorded. The Advisory Panel must be convened within two days of the President's notification and conclude its deliberations within four days.

Here's an answer. Get advice. Not from the whole Senate, but also not a hand-picked cadre of sycophants, either. The President, prior to entering negotiations, informs the Senate

[7] **The Journal of William Maclay, United States Senator from Pennsylvania, 1789-1791,** William Maclay, (Manuscript Division, Library of Congress), entry for August 22, 1789, p. 131.

Leader. An Advisory Panel is convened at random, not through an appointment process or partisan exercise. They provide the President with guidelines within four days. Simple. Clean. Efficient.

But negotiations are messy. It isn't a mere possibility; it is a near certainty that the President will have to be flexible and deviate from the Senate's advice. What happens then? *Can* they deviate? If so, why bother with the advice in the first place?

> After negotiation, the Senate shall receive the treaty text and the advisory guidelines, which must then be made public, unless classified. The Senate will then have twenty (20) days to review and vote. The President is not bound to follow the guidelines, but the full Senate may use them to evaluate the treaty.

Flexibility is maintained. Accountability is maintained. If (when) the President deviates from the advice provided by the Senate, they can defend that deviation, but the full body of the Senate will know the deviation happened. That's both fair and accountable. And Senators can then vote their conscience with the full facts and advice in front of them.

But what, exactly, *is* a treaty, anyway?

> For this Charter, a treaty is defined as any binding agreement between the United States and a foreign government or entity.

That says it all. Any binding agreement on the US with a foreign government or non-state actor ("entity").

Article III, Section 2.A.2(b). Diplomatic Hosting, De Facto Recognition, and Formal Recognition

> The President may receive ambassadors and other foreign diplomats and may recognize other governments, persons, or organizations with de facto or formal power. The President has the responsibility to declare whether such recognition implies legitimacy.

This deceptively short passage does some very heavy lifting. Receiving ambassadors and other foreign diplomats is boilerplate activity for a Head of State. In itself, there's nothing new about it. What's new is the careful language stating that the President has the power to recognize the political facts on the ground in a foreign country without declaring those facts legitimate.

"What does that mean, Gary?" Good question, and even my explanation is a little hard to pick apart. Let's go deeper.

Right now, we do ridiculous things like engage in third-party negotiations with foreign governments or organizations we deem illegitimate. There's pearl-clutching and sweating over whether a President shakes someone else's hand.

This ends that. The President can acknowledge the *de facto* authority or power in a country or region without endorsing it. The President could, for example, meet with the leader of Boko Haram in person, without triggering policy that says that group is considered legitimate. The facts are that they control broad swaths of certain regions in Africa. The

President *needs* the ability to meet with people like this without it looking like the United States considers them legitimate.

Finally, the language *explicitly requires* the president to declare whether recognition implies legitimacy. There can't be any gray area. No confusion.

"We met with them because they control the territory, in fact. Notwithstanding, we do not agree that they are the legitimate government."

Or "We are happy to recognize the legitimate head of government for the United Kingdom, the Prime Minister."

This passage gives the President the flexibility they need in foreign relations. Nothing more.

Article III, Section 2.A.2(c). General Diplomatic Authority

> The President has the authority to conduct all other foreign affairs, including the positioning of military forces, imposing or lifting sanctions, and similar activity, unless otherwise explicitly limited by this Charter.

This is a simple clause included for legal hygiene. It's intended as a catch-all *and* an explicit acknowledgement of other limits in the Charter.

***Article III, Section 2.A.3. Appointment, Removal, and Oversight of Executive Officers***

The Executive Branch of the federal government is massive. The President can't lead it alone; they need other officers to help with that task. This clause covers the definitions, appointments, dismissals, and limitations of Executive officers and advisors.

Article III, Section 2.A.3(a). Definitions

> Executive Authority means the power to direct an agency, Officer, or employee of the United States; to obligate federal funds as authorized by Congress; to implement or enforce law within the federal government; to supervise federal operations; or to exercise powers delegated by statute.

We start at the beginning. This defines what the Charter means when it refers to "Executive Authority." Since most of the rest of the clause relies on this term, this isn't formality for its own sake. The definition is vital, and this makes it clear.

> Presidential Officers are Officers who exercise Executive Authority delegated to them by the President and are not supervised by any Officer other than the President.

The top tier of executive officers is defined here: Presidential Officers. It is the individuals who can exercise Executive Authority and report directly to the President. For the most part, that's the Cabinet, but it also includes a few other agency heads. For example, the Director of National Intelligence is a Presidential Officer under this framework, even though they aren't a Cabinet Secretary.

> Subordinate Officers are Officers who exercise Executive Authority on behalf of a Presidential Officer or Ambassador who is their direct supervisor.

The layer immediately below the Presidential Officer is the Subordinate Officer. Not everyone down the chain of command is a Subordinate Officer; only those who report directly to the Presidential Officer are.

You might be wondering, "Yeah, but why make Subordinate Officers out of people who report to Ambassadors? Aren't Ambassadors Subordinate Officers in their own right? How does that work?" If you weren't, I'll bet you are now!

There's an operational reason. Ambassadors exist in a space that's a little unusual. They *are* Subordinate Officers, because they report to the Secretary of State. There's no way to wiggle out of that. But they are also the principal on the ground in a foreign country. Their status isn't perfectly mapped by an organizational chart. As a result, neither is the status of the people who report to them. Thus, the special definition.

Article III, Section 2.A.3(b). Appointments

> The President shall nominate all Presidential Officers, Ambassadors, Judges, or other Officers so designated by this Charter, subject to confirmation by the Senate.
>
> Congress may not compel the Presidential appointment of other Officers in statute.

With the definitions out of the way, we can move on to how Officers are appointed and by whom.

The President nominates Presidential Officers, Ambassadors, and Judges. They also nominate specific other officers mandated by the Charter (like the Commissioner of Federal Elections).[8] This is completely unchanged from the Constitution of 1789.[9]

[8] *See* **National Charter of the United States** (unratified), Article VI, Section 1.D.3(a2). Appointment (of the Commissioner of Public Elections).
[9] *See* **Constitution of 1789,** Article II, Section 2, Clause 2: "...and he shall nominate...Ambassadors,...Judges of the supreme Court, and all other Officers of the United States...."

What's different is a limitation on Congress. Under this Charter, Congress has sole authority over the size and scope of government.[10] That's great. It's more than great; it's a proper delegation and assignment of that authority. What this subclause does is say, "You can't make a Subordinate Officer or other lower official subject to Presidential appointment. Only Presidential Officers are subject to that."

For a simple example, let's consider this scenario. Congress creates a new department, headed by the Chief, who reports to the President. The Chief is a Presidential Officer, so they are appointed by the President. The Vice Chief, however, reports to the Chief. They are a Subordinate Officer, and Congress can't require a Presidential appointment. Theoretically, Congress could make the Vice Chief report directly to the President, which would change the calculus, but that seems unlikely. The President only needs one person reporting to them in the new department.

> At the beginning of any President's first term of office, within ten days of their inauguration, the President may nominate new members of the Cabinet and new Ambassadors, regardless of the continuity of service of currently serving members. Such a nomination serves as a summary dismissal of the previous Officer and shall not require the assent of the Senate. This power shall not extend to other Presidential Officers nor to any Judge.

Any new President gets a one-time-only chance to replace any member of the Cabinet, even if they haven't resigned. It's the same for Ambassadors. This Charter allows for continuity

[10] *See* **National Charter of the United States** (unratified), Article II, Section 4.E. Institutional Authority.

of service across administrations,[11] but a brand new President has ten days to replace them without getting the Senate to agree. That's because a President will have a vision, and they deserve to select Ambassadors and Cabinet members who will support that vision. But they have to do it quickly, or the normal rules click back into place.

> Confirmation shall require a simple majority of Senators voting in favor, and appointment shall be final upon confirmation. Confirmation votes may only be carried out between the hours of 8 a.m. and 4 p.m. in the Nation's Capital.

This is generally the same as the process for these officials now, but there are some differences. First, the language clearly specifies that confirmation requires only a simple majority. While that's technically true now, it isn't explicitly codified in the Constitution of 1789. Current Senate rules have made a 60-vote threshold a real danger in confirmation votes. Though the filibuster is broken, the Senate retains its ability to write its own rules. This makes sure no chamber rules override the intent of the confirmation process.

Second, this passage states that the appointment is final upon confirmation. There is no requirement for a signed commission from the President. If the President nominated them and the Senate voted to confirm them, they are appointed. Full stop.

Finally, the Charter requires confirmation votes to occur only during regular business hours. No after-hours or late-night votes that happen with bare quorums to sneak through controversial nominees or avoid unfavorable press coverage.

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[11] *See* **National Charter of the United States** (unratified), Article III, Section 2.A.3(d). Expiration of Executive Offices.

Subordinate Officers must be appointed by the Presidential Officer or the Ambassador who supervises them. They shall be subject to the same confirmation process, procedures, and limitations as Presidential Officers.

This is entirely new. Under the Constitution of 1789, Subordinate Officers are nominated by the President, just like Presidential Officers. By contrast, under this Charter, Subordinate Officers are appointed by the Presidential Officers or Ambassadors who supervise them. The President gets the Cabinet they want, and the Cabinet gets the Subordinate Officers they want.

The confirmation process is *identical to that* for Presidential Officers and Ambassadors. That prevents Presidential Officers from appointing unacceptable subordinates. It also preserves the simple majority and business-hours-only confirmation requirements.

The President may fill vacancies of Presidential Officers with acting Officials. Where no other limit is imposed, an acting appointment is valid for no more than ninety (90) days. Acting appointments shall automatically expire upon confirmation of a permanent Officer.

The President can still use acting appointments. But they can't use them to make an end run around the appointment process. Acting officers can only serve for 90 days, at most, without an accompanying nomination and confirmation.

Article III, Section 2.A.3(c). Dismissals

> The President may request the dismissal of a Presidential Officer by submitting a written justification for removal to the Senate. The Senate must approve the request by a simple majority of Senators voting.

This is new. Under the Constitution of 1789, not one word is written about the removal of Executive Officers outside of the impeachment process. However, that doesn't mean that the founders didn't think the President could do it. The early Congress structured early executive departments around the assumption. Later court cases have solidified that doctrine.[12] The Charter rejects that notion and, in constitutional law, solidifies the idea that if the Senate is required to confirm and appoint, it is also necessary to dismiss.

So, why change this principle? "You're creating the potential for Senatorial sabotage. The Cabinet will be loyal to the Senate instead of the President." Well, first of all, the Cabinet should be loyal to the *Charter* and to the *American People*, not the President or the Senate. But more practically, what happens when a Cabinet Secretary decides to act or not act based on their conscience in defiance of a President? Under today's scheme, that Secretary would be fired. It is naïve to pretend otherwise.

[12] *Myers v. United States,* Volume 272, **United States Reports,** opinion begins on page 52 (1926) held that the President can remove any executive officer without the assent of the Senate. *Humphrey's Executor v. United States*, Volume 295, **United States Reports,** opinion begins on page 602 (1935), held that certain officers of independent agencies could have some protection from Presidential dismissal based on the Separation of Powers, since Congress mandated the independence of the agencies. *Seila Law LLC v. Consumer Financial Protection Bureau,* Volume 591, **United States Reports** (currently unpublished, No. 19-7. Decided June 29, 2020) partially reversed *Seila Law.*

The Charter, on the other hand, protects the individual from a vindictive President. If the President issues an unlawful or unconstitutional directive or order, the Presidential Officer can defy the President.

This isn't a hypothetical edge case. In 2004, Attorney General John Ashcroft refused to re-authorize the NSA's wireless surveillance program. President Bush would have been within his legal rights under current law to fire him. He chose not to, but it takes no great imagination to see that some of his successors would not have been so reticent.

Subordinate Officers may be dismissed for cause by the Ambassador or the Presidential Officer supervising them. The President may not dismiss a Subordinate Officer directly.

Subordinate Officers can't be fired capriciously, but their dismissal doesn't require the Senate to sign on. Still, they are somewhat protected from the President's ire. They can't be fired directly by the President, only by their supervising Presidential Officer, who *could* choose to defy that order. It's a fragile shield, but a shield all the same.

Ambassadors serve at the pleasure of the President.

Ambassadors are a special case. They embody the United States government in the countries where they serve. As such, their behavior can have far-reaching consequences, requiring swifter action than that of Presidential Officers. For that reason, they can be fired directly and immediately by the President.

Article III, Section 2.A.3(d). Expiration of Executive Offices

> Presidential Officers and Ambassadors are presumed to remain in Office at the expiration of a Presidential term unless they resign or the Senate confirms a new, duly nominated Officer or Ambassador.
>
> Subordinate Officers serve until they resign or are dismissed.

This is a simple procedural subclause that maintains continuity until new appointments can be made during a Presidential transition.

Article III, Section 2.A.3(e). Personal, Advisory, and White House Staff

> The President may select their personal, advisory, and/or White House staff, which shall serve at the pleasure of the President.

The President's personal staff: the Chief of Staff, White House Counsel, Communications Director, *et cetera*, are not subject to the appointment and confirmation process. They also aren't protected in the way Presidential Officers are.

> No member of the President's personal, advisory, or White House staff may exercise Executive Authority or direct any officer or employee outside their staff. Neither may any of these individuals communicate outside the White House staff on matters of policy, except if: 1) They are communicating with a Presidential Officer at the written direction of the President, or 2) They do so in the presence of the President. Any act done in violation of this Section is void and creates personal liability.

The President's staff is expected to assist and advise the President from *within* the White House. They have no executive authority as defined in the Charter. They aren't permitted to influence executive officers, except in meetings with the President or on written orders *from* the President. Why? Right now, the Executive Office of the President can and sometimes does function as a Shadow government. That ends with this Charter.

***Article III, Section 2.A.4. Power to Issue Executive Orders***

> The President may issue executive orders, but only to the extent that they do not function to make law. In this context, "making law" means the creation of new legal obligations or rights, or the repeal of existing obligations or rights.

The President doesn't do every single task in the Executive Branch on their own. In fact, they actively carry out very few of them. Because of that, they need the ability to issue orders.

However, the modern Presidency has tended more and more toward rule by Executive Order. It's an abuse that all recent Presidents are guilty of, and it is a clear expansion beyond the Framers' vision of the Executive. They imagined an "energetic executive," sure, but most did not envision a King.[13]

The President *can* issue Executive Orders (EOs) to carry out their duties as the leader of the Executive Branch. They *can't* act like Congress or a constitutional drafter. Their EOs must be in service of an executive power or authority already granted to them.

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[13] *I say "most," because some of the framers did want a type of democratically accountable President modeled on a monarch (Hamilton, in particular). That's not something we talk about much in History and Civics classes.*

This clause returns the President to their proper lane: faithful *execution* of the laws, not their enactment.

### *Article III, Section 2.A.5. Veto and Remand*

> The President may veto legislation from Congress, which in turn may override the veto with a two-thirds majority in both chambers.

This is very similar to the veto provisions in the Constitution of 1789.[14]

> Alternatively, the President may remand a bill to Congress with written recommendations for remedy. Congress must act within sixty (60) days. If it passes a revised bill, the President may veto it, but only with a written explanation of unconstitutionality or harm to Rights.

This, on the other hand, is an innovation. Rather than pass bill → veto → override as the only possibility, the Charter language here makes space for collaboration. The President can send a bill back to Congress that is *close* to something they would sign, with written guidance, and Congress can reconsider, and *that* bill can only be vetoed with a written explanation grounded in constitutionality or rights protection. The idea here is to cool the temperature and encourage working to solve problems rather than focusing on procedural

[14] **Constitution of 1789,** Article I, Section 7, Clause 2: "Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law."

brinksmanship. It still relies on the good faith and goodwill of the stakeholders, but the *possibility* of compromise exists, where it didn't before.

> If the President fails to sign or remand the bill within ten days, it becomes law. If Congress does not act within sixty days of remand, the bill is considered vetoed.

This is also new. The Constitution of 1789 allowed the so-called "pocket" veto. The Charter flips that on its head. If the President wants to veto a bill, they have to publicly say so. It's a simple accountability measure. A President can veto, but they have to own their convictions.

***Article III, Section 2.A.6. Pardons and Commutations***

> The President shall have the power to issue pardons or to commute sentences for federal crimes, provided that:
>
> 1. No pardon or commutation is extended to the President or to their immediate family; and
> 2. No pardon or commutation may be issued for any offense for which charges have not been brought; and
> 3. No pardon or commutation is possible to nullify an impeachment.

Everyone knows that the President can issue pardons. This isn't new.[15] There are two new limitations on the presidential pardon power, though. Let's talk about what they are and why they're there.

First, let's talk about self-pardons. There has been debate over the years about whether the President has the power to pardon themselves. The courts have not, to the best of my knowledge, weighed in on that question. But the very idea of self-pardon runs counter to everything the founders believed.

Justice Marshall's claim that we are a nation of laws fails if the President can pardon themselves. It's an obvious conflict of interest and abuse of power. For all the same reasons, pardons of the President's immediate family are problematic. That's why this Charter forbids it.

Second, there is the Watergate pardon. On September 8, 1974, President Gerald Ford issued Proclamation 4311, pardoning his predecessor, Richard Nixon. That's fine and clearly within both the scope and the intent of the Constitution of 1789. It was nakedly political, but clearly in-bounds. However, the *manner* of the pardon was dubious. He pardoned Nixon for any offenses he "has committed or may have committed or taken part in."

[15] **Constitution of 1789,** Article II, Section 2, Clause 1: "…and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment."

Ford wasn't pardoning Nixon for crimes he had been convicted of; he was precluding conviction in the first place. That is simply wrong. The argument has been made, over and over, that Ford did so to heal the nation.

That's bullshit.

And even if that was the motive, it was wrong. Democratic government requires accountability, including criminal liability when necessary.

Finally, pardons can't be used to evade the consequences of impeachment. Again, that's not new; it's directly from the Constitution of 1789. It's just wrapped in more modern language.

***Article III, Section 2.A.7. State of the Union Address***

> The President must deliver an annual State of the Union address each February, except during their inaugural year. The address shall be made to a joint session of Congress and transmitted to the People. The address shall be recorded and publicly accessible. When reporting on the state of affairs—including the Treasury and the military—the President must provide truthful and factual information. Sensitive details that could cause harm may be withheld, but the President shall not use misleading or false statements. The President is not limited to once a year and may deliver additional addresses as seems reasonable.

Again, this language reaffirms the traditional principle laid out in the Constitution of 1789.[16] The requirement for truthful and factual information serves two purposes. The first, obviously, is that the President shouldn't be lying to Congress or the American people.

The second has more to do with spin. For as long as I can remember, every one of these addresses has had the President declare, with great conviction and power, that "The State of our Union is strong!" You know exactly where our Union is weak, because that will be where they put this emphatic declaration. It's insulting.

"But we can't admit where we aren't strong; our enemies are watching." Do you seriously believe they don't already know? That's a real argument people make, but it's a dumb one.

Another explicit feature is the allowance for addresses more often than once a year. The Constitution of 1789 did not impose that limit, but it has become the implied standard. This simply affirms that these addresses can happen more frequently, if the President so chooses.

[16] *See* **Constitution of 1789,** Article II, Section 3.

### *Article III, Section 2.A.8. Statutory Powers*

> The President may exercise other powers as granted by Congress, provided those powers do not infringe on the Rights of the People or violate, impede, infringe, or overrule the Powers granted to other branches of Government by this Charter.

This final clause is, once again, a catch-all. It cleans up anything that the other powers and duties missed while still putting guardrails in place to fulfill the purpose of government – the securing of rights for the people.

## Article III, Section 2.B. Duties and Powers of the Vice President

### *Article III, Section 2.B.1. Independence and Inclusion of the Vice President*

> The President must fully brief the Vice President on all matters of policy. The Vice President will have access to the meetings necessary to fulfill this role. The Vice President is obligated to support the lawful policy goals and directives of the President, unless they believe those goals or policies to be unlawful.
>
> If the Vice President believes that any Presidential order is unlawful, they are obligated to disobey that directive. They must submit a written objection stating the basis of their belief to the Leader of the Senate. That objection must be entered into the Congressional Record, subject to the usual rules regarding classified material.

Under this Charter, the Vice President isn't a mere political adjunct of the President. They are an independently elected official, distinct from the President. They might not share the same policy preferences or political party.

We tried this once before, in the early days of the Republic, and it didn't go well. The President and Vice President were almost certainly rivals, because they were the top two vote-getters in the Electoral College. This Charter's structure lacks that much obvious acrimony, but they *are* independent actors. For that reason, and to avoid the acrimony of the Jefferson-Burr years, the Vice President is required to support the President's agenda, unless it is unlawful. They can't be obstructionists on principle, only on the basis of law.

If the Vice President concludes the President has issued them an unlawful order, they must disobey. It is an affirmative duty. But they must submit a written objection explaining why they believe the order was unlawful. That objection goes to the Senate Leader and is published in the Congressional Record. They can and must object, but they do so openly and state their reasoning.

Notice this is a refusal to carry out an order (if one is given to the Vice President) and a requirement to object in writing. No power is granted to seize control of any agency. The Vice President can't unilaterally derail the President's agenda or policy. The VP is required not to participate and to document. That's all.

The President is required to allow the Vice President to have access to all meetings and so on. Why? Because the continuity of the Executive Branch hangs on the weakest breath of the President. The Vice President absolutely *must* be fully up to speed and capable of taking control in the event of a nightmare scenario.

### *Article III, Section 2.B.2. Senatorial Tie-Breaker*

> The Vice President shall not preside over the Senate but shall cast a vote in the case of a tie. The Vice President shall have no other legislative power or privilege.

As we discussed in the commentary for Article II, the Vice President is no longer the President of the Senate. They retain the tie-breaking vote, when necessary, but enjoy no other Congressional role. That's it.

### *Article III, Section 2.B.3. General Duties*

> The Vice President shall perform all duties expressly assigned under this Charter and may be delegated additional responsibilities by the President. Congress may assign duties or Powers to the Vice President, provided those powers do not infringe on the Rights of the People or violate, impede, infringe, or overrule the Powers granted to other branches of Government by this Charter.

The mandated duties of the Vice President are brief: succeed the President when called upon to do so, serve on Use of Force Advisory Councils, back the President's policy goals and agenda, break a tie in the Senate, and dissent when the President gives them an unlawful order.

They are not limited to those duties, though. The President can delegate other duties to the Vice President. Similarly, Congress can assign duties or powers to the Vice President, as long as they don't otherwise violate the Charter. The Vice Presidency is intended to serve as an assistant to the President, and the Charter provides sufficient flexibility to the President and Congress to allow for that.

## Article III, Section 3 – The Cabinet

The President shall appoint the heads of all executive departments, who shall serve as Cabinet members. Among these departments, the Department of State, the Department of the Treasury, and the Department of Defense shall always be maintained. Other departments may only be created, preserved, or abolished by Congress through statute.

Cabinet members shall be Presidential Officers as outlined in this Charter.

In the event of a Cabinet vacancy, the President must nominate a qualified replacement within five (5) days of a vacancy.

This brief section establishes the President's Cabinet. It imposes an absolute mandate that the Departments of State, Treasury, and Defense are not optional. Then it does something the Constitution of 1789 did not. It affirmatively declares that other departments' existence is in the hands of Congress, not the President. The word "only" does a lot of work; it precludes executive tampering with the size and scope of government.

On March 20, 2025, President Trump signed an Executive Order entitled "Improving Education Outcomes by Empowering Parents, States, and Communities."[1] The order guts, but stops short of fully dismantling the Department of Education. However, during the

[1] **Improving Education Outcomes by Empowering Parents, States, and Communities, Executive Order 14242,** Donald J. Trump (March 20, 2025). Compiled at **Title 90, Code of Federal Regulations,** page number unavailable unit final publication. Currently available at https://whitehouse.gov/presidential-actions/2025/03/improving-education-outcomes-by-empowering-parents-states-and-communities/ (Last visited October 5, 2025).

signing, Trump stated, “My administration will take all lawful steps to shut down the department. We’re going to shut it down, and shut it down as quickly as possible. It’s doing us no good.” This statement was widely reported at the time.[2]

Many have argued that the President lacks that authority, since the Department of Education is a creation of Congress. It’s not my intention to weigh in on whether there should be a Department of Education. But the existence of the *debate* is reason enough to settle the issue over who has the delegated authority to decide that question.

Under this Charter, the size and scope of government are not the purview of the Executive. In other words, the President can’t do that; only Congress can.

The President can’t choose their Cabinet on their own. They make a *nomination,* but the Senate has to confirm the nominee. This isn’t new. In recent administrations, Senators have occasionally resorted to the cop-out, “The President deserves the Cabinet they want,” which is just that – a cop out. The Senate has a responsibility for confirmation for a reason. This isn’t a ceremonial requirement; it is a check.

The President can appoint someone to serve as an acting member of the Cabinet, who can serve for up to 90 days.[3]

But….

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[2] **Trump Signs Executive Order to Begin Dismantling Education Department,** Sam Levin, THE GUARDIAN (20 March 2025). https://www.theguardian.com/us-news/2025/mar/20/trump-executive-order-education-department, last visited by the commentary author in November 2025.

[3] *See* **National Charter of the United States** (unratified), Article III, Section 2.A.3(b). Appointments.

Even if the President chooses an acting secretary to fill a vacancy, they *must* nominate a qualified permanent replacement within five days. Why is this a big deal? It prevents the game of leaving a pliant acting secretary in place who would never pass a confirmation vote.

## Article III, Section 4 – Executive Limitations

### Article III, Section 4.A. Non-Plenary and Non-Unitary Executive

> Neither Congress nor any court shall construe the powers of the Executive Branch to extend beyond the explicit authorities granted by this Charter. The President must faithfully execute and respect the duties and limitations imposed by this Charter and the laws enacted in accordance with it.
>
> There must be no understanding of any provision in any part of this Charter or in statute that would grant any official in the Executive Branch unitary or plenary powers.

This clause vigorously shuts down two loopholes in current constitutional interpretation – the doctrines of unitary and plenary executive power. It limits the Presidency (and the executive branch more broadly) to the explicit powers delegated by citizens through the Charter.

But what are unitary and plenary powers? Most Americans don't deal with those terms on a daily basis, if at all.

Plenary means full, complete, and unqualified. In the context of constitutional law, plenary authority is the power to act on a particular issue without approval or oversight. In other words, it is a blank check.

Unitary means acting as a whole, rather than as separate parts. In this context, it refers to the idea that all executive power is vested in a single person, making all other officials

subordinate to that person. The unitary executive can direct, override, or dismiss any subordinate official at will. Unitary executive theory sees independent agencies as constitutionally suspect.

Why is this language in the Charter? Let's look at some historical context.

We already discussed justiciability in the previous section. The precedent set by *Marbury v. Madison,* which established a distinct class of non-justiciable "political" acts, set the stage for plenary powers. If the President has powers that aren't subject to judicial review, aren't they plenary? But we've already explored how, in the United States, we believe no one, not even the President, is above the law.

In 1936, Justice George Sutherland wrote for the court in the case of *United States v. Curtiss-Wright Export Corp.*[1] that in foreign affairs, the President has powers of external sovereignty that aren't dependent on congressional delegation. Though this was dicta (commentary, not the actual holding), it established the Curtiss-Wright Doctrine, which holds that the executive has plenary and exclusive authority in foreign affairs. But that doesn't make sense. If that had ever been true, why would we need the Senate to consent to a treaty?

Early unitary theory comes into focus when we look at the landmark case, *Myers v. United States.*[2] Chief Justice (and former President) William H. Taft wrote the opinion, which held that the President has exclusive authority to remove executive officials whom they appoint

[1] *United States v. Curtiss-Wright Export Corp.,* **Volume 299, United States Reports,** opinion begins at page 304 (1936).
[2] *Myers v. United States,* **Volume 272, United States Reports,** opinion begins at page 52 (1926).

without Senate approval, because the removal power is inherent in the executive power under Article II of the Constitution of 1789. Later cases[3] have wavered about Taft's cornerstone decision, which laid the foundation for unitary executive theory. However, the most recent of these was in 2020. This is still an open and hotly debated question.

But who establishes the size and scope of government? Is it the President? No. It is Congress. And if Congress establishes limits on the agencies and departments it creates, the President, in the course of faithfully executing those laws (a requirement in both the Constitution of 1789 and this Charter), is logically bound by them. That's inherently opposed to the idea of a unitary executive.

In this Charter, the citizens of the United States delegate specific powers to the President, to Congress, and to the Courts. Those powers are carefully defined and limited. This section is the iron bulwark, the final defense against any notion of plenary or unitary power.

The executive, including the President, has exactly the powers the Charter and Congress give. Nothing more.

**Article III, Section 4.B. Severed from Congress**

> The President is expressly forbidden from convening, suspending, or adjourning Congress or any portion thereof.

[3] See *Humphrey's Executor v. United States,* **Volume 295, United States Reports,** opinion begins at page 602 (1935); *Morrison v. Olson,* **Volume 487, United States Reports,** opinion starts at page 654 (1988); and *Seila Law, LLC v. Consumer Financial Protection Bureau,* **Volume 591, United States Reports,** currently not published in final form. Opinion available at https://supreme.justia/com/cases/federal/us/591/19-7/, last visited by commentary author November 2025.

The President and the Congress are equals. Congress isn't and can't be subject to Presidential whims.

It's surprising to me that the Founders, given King George's proclivity for suspending legislatures[4], did this, but they included a power of that sort in the Constitution of 1789. Article II, Section 3 says, "…he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper…."

This Charter removes that power from the President. It never should have been there.

**Article III, Section 4.C. Failure of Duty**

> If the President refuses or otherwise fails to carry out any constitutional duty, any ten sitting members of Congress, regardless of chamber, may submit a formal complaint to the Chief Justice of the Supreme Court, who must review the complaint within ten (10) days. If the Chief Justice finds clear and convincing evidence that the President has exceeded or abandoned their lawful role, they shall transmit a certification of that fact to the Speaker of the House. The Speaker must introduce Articles of Impeachment immediately upon receipt.
>
> This referral does not presume guilt but constitutes an obligation to investigate and prosecute the matter if warranted.

[4] **The Declaration of Independence**, Thomas Jefferson (United States of America 1776), Paragraph 5: "He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people."

There are three ways in this Charter to impeach a President. The first is familiar – Articles of Impeachment introduced in the traditional way.[5] The second is novel but is discussed in the commentary for Article II – forced Articles of Impeachment via a citizen petition to their Representative.[6] This subsection outlines the third.

A partisan Speaker could prevent Articles of Impeachment from reaching the floor, even when the will exists more broadly to consider them. This subsection grants any ten members of Congress the ability to file a formal complaint. If the Chief Justice agrees that they have presented clear and convincing evidence that the President has exceeded their authority or has failed to fulfill the duties of the office, they are constitutionally directed to certify that to the Speaker, and that certification overrides the Speaker's discretion.

It's important to note that this mechanism is not for felonious conduct. It is for failure to fulfill the duties of the Presidency or for exceeding constitutional Presidential authority. I'd also like to point out that a referral doesn't imply guilt. It just forces the House to act on Articles of Impeachment.

**Article III, Section 4.D. Limits of Executive Power and Preservation of Rights in States of Emergency**

In this commentary, I am crystal clear about the risk that emergency powers will be turned into tools of authoritarian control. I stop just short of saying that it *always* happens (because it doesn't – but it often does).

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[5] *See* **National Charter of the United States** (unratified), Article II, Section 5.F.3. Impeachment Procedures.
[6] *See* **Ibid.,** Article II, Section 8.B.4(c3). Acceptance of Impeachment Petitions and Ethics Complaints.

The fact is that emergency situations *do* happen, and they require actions we wouldn't normally accept. So this subsection, with five clauses in all, shapes the outer limits of executive emergency power, making my best attempt to limit the risk inherent in them.

In fact, that is *so much* my intent that this grant of power is literally organized in the section on Executive Limitations. That should say everything you need to know about it.

***Article III, Section 4.D.1. Definition of Emergency***

> An emergency is defined as a temporary and urgent set of circumstances that requires exceptional action to preserve the Rights of the People or the ability of the Government to secure them.

The lowest-hanging fruit for executives with authoritarian tendencies is to begin defining more and more things as emergencies requiring emergency action. Soon, a perpetual state of emergency takes hold, and the executive is unfettered. This clear definition establishes guardrails to prevent that.

I want you, dear reader, to notice what has to be present for a state of emergency to even be declarable. Either something that is threatening rights or is somehow degrading the government's ability to secure those rights. There's nothing here about "state interests." There's not even anything about that two-faced hobgoblin named National Security. It's all about rights.

***Article III, Section 4.D.2. Authority to Declare a State of Emergency***

> The President can declare a State of Emergency if:

- Circumstances exist that meet the definition of an Emergency, and
- The Leader of the Senate and the Speaker of the House must agree with the President in writing. If either is incapacitated or otherwise unable to provide written assent or dissent, then their duty passes to their second, that is, the Vice Speaker of the House in place of the Speaker of the House or the Deputy Leader of the Senate in place of the Leader of the Senate.

Declaring an emergency should never be possible on a whim. Who decides? How? This clause outlines that the President decides, *but only when the definition of an emergency has been met,* and with concurrence in writing from congressional leadership. The President can't just wake up and declare an emergency over morning coffee.

***Article III, Section 4.D.3. Limits to the Duration of a State of Emergency***

A State of Emergency may last up to thirty (30) days but cannot be extended without a vote of two-thirds in both chambers of Congress in agreement. Only one ordinary extension may be allowed and that extension can only be of an additional sixty (60) days duration at the maximum. Thus, according to this provision, the maximum duration of any individual State of Emergency, with an ordinary extension, is ninety (90) days.

If a longer period is required, the President must request a session of both Chambers of Congress, along with the Supreme Court, present and voting *en banc*, to detail why an extraordinary extension to the State of Emergency is required, and how the

> circumstances continue to meet the definition of Emergency. Once the President has made that case, the Supreme Court shall vote whether to assent, with a unanimous ruling required to accede. If the Supreme Court assents, both chambers of Congress must assent by two-thirds ($^2/_3$) majority vote. The joint session may not be dismissed until all necessary votes are held, tallied, and recorded. If assent is given in this extraordinary circumstance, there may be a single additional period of ninety (90) days, after which time the State of Emergency must end, and no further Emergency may be declared for the same circumstances.

Unending states of emergency are the dictator's accomplices. This clause is very tight. It constrains the length of any declared state of emergency. There is some flexibility built in for extensions, but each step requires a higher bar to approve. A second extension involves all three formal branches of government, including a unanimous affirmation by the Supreme Court. Once all of those avenues are exhausted? The emergency is over. Full stop. At the outer limit, including both ordinary and extraordinary extensions, a state of emergency may last only 180 days.

"Wait, what if the conditions still exist after that time has passed?" Well, why haven't you figured it out yet? You had 180 days to figure out a more reasonable, regular, and statutory solution to the problem. That's roughly six months.

***Article III, Section 4.D.4. Explicit Executive Emergency Power***

> During a State of Emergency, the President may redirect public funds, personnel, and facilities to address the imminent threats to life, safety, or to the Government's ability

to secure the Rights of the People. During a State of Emergency, the President is also authorized to spend or borrow money without Congressional authorization, but only for matters that address the Emergency. This spending authority supersedes the usual limitations on debt and requirements for debt reduction. These powers may only be exercised provided that they do not infringe on the Rights or due process of the People.

We've talked about what an emergency *is.*

We've figured out how to declare one.

We've limited how long a state of emergency is allowed to last, with laddered and escalating extensions.

But what can the President *do* in an emergency?

That's what this clause is for, and it's not the usual scary stuff. They can move money and people. They can spend money. They can borrow money.

And any of the spending has to be related to the emergency. No, "I wanted this missile, but Congress said no, so I'll slip it into this hurricane relief emergency."

That's it. That's all the President gets to do differently than normal under this clause.

And they can't somehow interfere with rights and due process while they're doing it.

***Article III, Section 4.D.5. Non-Derogability of Rights in an Emergency***

All rights are fully non-derogable, even during a State of Emergency.

This is the second adamantine[7] lock on power. The state can't say, "I'm not abridging rights. Those particular rights don't apply during an emergency." This simple sentence carries enormous weight. To the best of my knowledge, no other nation's foundational law makes a declaration this strong about the strength of rights during an emergency. That's as it should be. The United States once held this ground, and we have gradually ceded it. It's time to reclaim our role as the global leader in rights protection.

# ARTICLE IV – THE JUDICIAL BRANCH

## Article IV, Section 1 – Judicial Authority and Function

### Article IV, Section 1.A. General Authority of the Courts

> The Judicial Branch has the final authority to interpret and apply this Charter, including ruling on the constitutionality of lesser statutes.

This is a blunt and clear message to start Article IV. There is no ambiguity. The Judicial Branch is the final arbiter of meaning with respect to the Charter and the constitutionality of everything else. But why is this so bluntly stated? Why is it necessary to state, at all?

The Framers of the 1789 Constitution weren't clear on this point. They mandated a Supreme Court and gave it specific jurisdiction, but they didn't say who would decide what the document meant.

[7] Adamantine means "unconquerable" or "unbreakable."

That's because they didn't all agree, though they may not have realized that they didn't agree. Everyone agreed that courts interpreted the law, which was pretty settled in their lived experience. What they didn't agree on was the scope of that authority.

Some held that "higher law," in the form of their newly written constitution, was supreme; any lesser statute in conflict with it ("repugnant to it" in the parlance of the day) was void, and that courts could decide that. Others accepted the idea of higher law, as well as judicial interpretation of law, but didn't agree that courts could nullify a statute on that basis.

That controversy led to *Marbury v. Madison*, which I have referred to repeatedly in this commentary. Here's the key point, though. Had the court ruled the other way, that it *didn't* have the authority to decide constitutionality, we would have had a *very* different country by now.

Taking the space and time to articulate the exact authority of the Judicial Branch prevents us from repeating their mistake.

> Its purpose is to protect the Rights of all Persons, ensure that the government remains within its lawful limits, and resolve disputes fairly, according to the principles in this Charter.

This is the "why." Why do we need the courts? By now, I suspect you've grasped the theme: protection of the rights of the people.

In Sunday School, when in doubt, the answer is "Jesus." In this Charter, when in doubt, the answer is "the rights of the people."

> The Courts derive their authority from the consent of the Citizens, and may use it only to uphold the Charter, defend the Sovereignty of the People, and ensure equal application of the law.

And this is the answer to who gives the courts their power and how they are allowed to exercise it, at least in philosophical terms. The people grant the power, and only for their defense. The answer to how the courts do that follows in later sections.

**Article IV, Section 1.B. Military Courts-Martial**

> Military Courts-Martial, as established in law by Congress, are permitted within the executive branch.

This sentence does two things, one explicit and one implicit. First, it explicitly authorizes the existence of Military Courts-Martial. "Yeah, Gary. I can read just fine. I don't need you to spoon-feed me." Fair enough, but it also, by specifically saying "are permitted," implies the counterpoint that there are other courts that *aren't* permitted (which we will discuss in Subsection C).

> However, such courts are limited to matters relating to the conduct of members of the United States military or to Prisoners of War.

This says what military courts are allowed to rule on. It's a tightly limited list: POWs and members of the military. That's it. No civilians and no stretching the boundary.

Decisions and rulings by Military Courts-Martial are appealed to the Federal Provincial Appellate Court for Maryland.

Even military courts are answerable to civilian courts on appeal. Why? Because the military is under civilian control. This is not a military dictatorship. It is a Constitutional Republic, and our legal system is expected to reflect that, even in matters of military law.

But why are appeals heard in Maryland? And what is a Federal Provincial Appellate Court? Let's deal with the second question first. This Charter adds a level of appellate courts called Federal Provincial Appellate Courts (or just Provincial Courts, if you don't have two weeks to say it), which are the courts with original appellate jurisdiction.[1] As far as why Maryland, that's the Provincial Court that is granted jurisdiction over cases involving the Capital and matters that are national in scope, which would include the military.

Detainees who are not members of the United States armed forces or do not meet the definitions of a Prisoner of War here and in international law, must be released or their cases remanded to the Federal District Courts. If the correct District Court is not clear, the District Court with jurisdiction over the District of Columbia shall have jurisdiction.

[1] *See* **National Charter of the United States** (unratified), Article IV, Section 2.A. Judicial Structure, *and* Article IV, Section 2.B.4. Federal Provincial Appellate Courts and the Territorial Provincial Appellate Court *for more on the Provincial Courts.*

This ties up a few loose ends. What if a military detainee isn't technically a POW? Where do they go? What court hears the case? What if someone was detained in the middle of the Pacific Ocean? What court has jurisdiction? This clarifies those questions.

**Article IV, Section 1.C. Ban on Courts Beyond the Judicial Branch**

> All other adjudicative matters, whether in tax, criminal law, administrative law, immigration law, or any other matter requiring adjudication, shall be decided by courts within the Judicial Branch.

> No tribunal of any kind originating outside the Judicial Branch may issue legally binding judgments affecting the rights, status, or obligations of Persons, except as explicitly permitted in this Charter.

With the exception of the military courts-martial authorized in the previous subsection, this subsection bars the door against any tribunal outside the Judicial Branch. The language prevents both subject-matter ("…tax, criminal law, administrative law, immigration law, or any other matter requiring adjudication….") and organizational ("…originating outside the Judicial Branch…") creep.

All legal matters belong in the courts. Real courts. Not "administrative" tribunals that cosplay as courts.

# Article IV, Section 2 – Structure and Jurisdictions

## Article IV, Section 2.A. Judicial Structure

### *Article IV, Section 2.A.1. General Structure of the Judiciary*

The Judicial Branch consists of four levels:

- The United States Supreme Court (Supreme Court or SCOTUS);
- The Federal Circuit Courts of Appeal (Circuit Courts);
- The Federal Provincial Appellate Courts and the Territorial Provincial Court (Provincial Courts); and
- The several trial courts, which include:
    - The Court of International Trade (CIT);
    - The Federal District Courts (District Courts); and
    - The Federal Immigration Courts (Immigration Courts).

This lays out, in broad strokes, the general structure of the Judicial Branch. There are big differences between this Charter's judiciary and the one established in Article III of the Constitution of 1789.[1] That framework only created a Supreme Court and "such inferior Courts as the Congress may from time to time ordain and establish." In other words, only the Supreme Court is mandated. All other federal courts in the United States have been established by Congress.

[1] *Compare* **Constitution of 1789** Article III, Section 1: "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."

And Congress has made a mess of it.

In Title 28 of the United States Code, Congress established the "Article III" courts. That is, courts that fall within the Judicial Branch: the Supreme Court, Courts of Appeals, Court of International Trade, the Federal Circuit Court, and District Courts.[2]

That's all good and fine.

But Congress also established the Tax Courts and the Court of Federal Claims. These are considered "Administrative Tribunals," meaning they don't belong to the Judicial Branch. They aren't even required to follow the same due process standards. To further muddy the waters, Immigration Courts are a part of the Department of Justice. That places them within the Executive Branch. The same branch that handles enforcement also handles adjudication. The American people have traditionally rejected such schemes. The fact is, relatively few Americans are even aware of it.

What a confusing mess.

This Charter fixes all of that. Tax Courts and the Court of Federal Claims are absorbed into the District Courts.[3] In this clause, the structure of the judiciary is clearly laid out, and the courts within it are clearly established as part of the Judicial Branch.

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[2] *For the Supreme Court and District Courts, see* **Judiciary Act of 1789,** published in **Volume 1, United States Statutes at Large,** beginning at page 73 (1789). *For the Circuit Courts, see* **Evarts Act (Judiciary Act of 1891),** published in **Volume 26, United States Statutes at Large,** beginning at page 826 (1891). These publications reflect the law as originally enacted by Congress, before any portions were later reorganized or codified into the United States Code.

[3] *See* **National Charter of the United States** (unratified), Article IV, Section 2.B.2. Federal District Courts (Under Jurisdiction of Courts).

Each court exercises the authority granted to it by the Citizens via this Charter and by law.

All courts must remain within the limits of this Charter and are required to protect the Rights it guarantees.

Here's the other half of the fix, at least philosophically. The authority of the courts is explicitly a grant from the Citizens by the Charter, and by law. The Courts must be rights-affirming. And just like the Executive and Legislative Branches, they possess no inherent power of their own.

***Article IV, Section 2.A.2. Courts in United States Territories***

Territorial District Courts shall be established as part of the Judicial Branch. Each Territory shall have one District Court, and all Territories combined shall share a single Territorial Provincial Court. Appeals arising from the Territorial Provincial Court fall within the jurisdiction of the Circuit Court for the region encompassing the National Capital.

Where this Charter refers to District Courts or Provincial Courts, it must be understood to include those for Territories, as well.

Territories get short shrift under our current system. Sometimes, they're treated the same as everyone else, and sometimes what they're denied is shocking. That's both unjust and

incoherent, especially when we're talking about courts. Lady Justice is supposed to be blind. Let's make sure she is.

This passage ensures that U.S. Territories have access to the courthouse door at both the district level and the first level of appellate authority, the Provincial Court. The language clearly defines the appellate pathway beyond the Provincial Court.

Finally, it's clear that the judicial branch must treat those courts on par with their state-based counterparts. Justice in the Territories isn't second-class justice.

***Article IV, Section 2.A.3. Courts for the National Capital***

> As an exception to the rule for Territorial Courts, and for as long as it remains a Federal District, Washington, D.C. shall be served by the Provincial Court for Maryland. Appeals arising from the Provincial Court fall within the jurisdiction of the Circuit Court for the region encompassing the National Capital.

Washington D.C. is the capital, inevitably generating an unusual volume of litigation tied to federal action and policy.

Like the other Territories,[4] D.C. will have its own District Court to handle the initial heavy load. But the appellate burden flowing from the District Court is certain to be higher, because many of the cases will be higher-stakes, and the litigants more well-funded. A higher proportion of decisions will be appealed. That being the case, it makes sense to have

[4] Technically, it is a Federal District, but functionally, it is a Territory, which is why it is treated like one here.

the Provincial level nearby, so that litigants have ready access to the Provincial Court hearing those initial appeals.

Maryland and Virginia border the District. Of the two, Maryland borders D.C. on three sides, and Virginia only on one. So, based solely on that criterion, I chose Maryland's Provincial Court as the venue for first appeal. The choice of Circuit Court jurisdiction follows the same process, though it happens to match the general provision for all Territories.[5] The separate mention here is simply to avoid confusion arising from the different Provincial Court assignment.

The idea isn't to *make* Washington D.C. special, but to recognize that it already *is*—by virtue of being the nation's capital and the natural source of litigation surrounding federal policy.

**Article IV, Section 2.B. Jurisdiction of Courts**

***Article IV, Section 2.B.1. Federal Immigration Courts***

> In each congressional district, there shall be a Federal Immigration Court. These courts are equal in status and authority to the Federal District Court serving the same district.

This establishes the new framework for Immigration Courts. An important point here is that, though they are specialized, they are constitutionally established as equal to the District Courts. Until now, they have been statutory tribunals subordinate to the

[5] *See* **National Charter of the United States** (unratified), Article IV, Section 2.A.2. Courts in United States Territories.

Department of Justice. Now they are not only part of the Judicial Branch but also independent, just like any District Court.

> Immigration Courts shall have original legal jurisdiction for all proceedings related to federal immigration law arising within their district. This includes, but need not be limited to, asylum hearings, visa adjudications, deportation proceedings, and other matters arising solely from immigration law.

Here, the Charter declares the scope and authority of the Immigration Courts. Though they are equal to District Courts, their jurisdiction is limited to immigration law. It is limited to matters arising *solely* from immigration law. If a case includes elements of criminal law, contract law, or some other matter, it goes to the District Court. Immigration Courts are reserved for immigration law only.

> All matters considered in an Immigration Court must follow the same laws, procedural rules, and evidentiary standards as any other court. All Persons, whether Citizens or not, are entitled to the full array of Civil Rights granted by this Charter, even in matters involving immigration.

This seems snarky, doesn't it? But it isn't; it's vital. Let me help you understand why.

In *Fong Yue Ting v. United States* (1893)[6], the Supreme Court held that deportation is not *punishment*, so it doesn't require the same level of due process protections. The majority opinion spends many pages expounding how due process is absolute in the context of the

[6] See *Fong Yue Ting v. United States*, **Volume 149, United States Reports,** opinion begins at page 698 (1893).

Fifth and Fourteenth Amendments, but that deportation isn't punishment and doesn't deprive the deported person of life, liberty, or property.

That was reinforced in *Knauff v. Shaughnessy* (1950) and *Shaughnessy v. Mezei* (1953), where the court explicitly framed immigration powers as plenary and outside due process protections.[7]

The Charter language here is designed to reverse this trend. Why? What if I, a U.S. citizen, traveled abroad and was detained upon returning to the U.S.? If the Secretary of State mistakenly declared that I was, in fact, a citizen of North Korea, there is no requirement for anyone to so much as check my passport. I could be rendered stateless. There's no meaningful guaranteed requirement that anyone give me the opportunity to prove who I am.

Immigration matters can extend beyond immigration itself. Officials can make mistakes. Or, they can act with malice. Either way, plenary authority and the denial of due process not only harm immigrants but also can harm citizens with lineage stretching back to the Colonial Period, like me.

This Charter says that, even in cases involving immigration, civil rights and the rules of due process still apply to everyone.

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[7] See *Knauff v. Shaughnessy*, **Volume 338, United States Reports,** opinion begins at page 537 (1950); and *Shaughnessy v. Mezei*, **Volume 345, United States Reports,** opinion begins at page 206 (1953).

### *Article IV, Section 2.B.2. Federal District Courts*

In each congressional district, there shall also be a Federal District Court with territorial jurisdiction for that district. Except where this Charter provides otherwise, the Federal District Courts have original legal jurisdiction over all federal civil and criminal cases. This includes constitutional claims, violations of federal law, and disputes between Persons or entities arising under this Charter or federal statutes. District Courts may also:

- Review actions taken by federal agencies,
- Issue injunctive or declaratory relief,
- Hear petitions for habeas corpus, and
- Conduct preliminary hearings in cases where a higher court holds original jurisdiction, if requested to do so by the higher court.

Put on your wonk hat. This gets into the weeds a bit.

The Federal District Courts are the first tier of the judiciary. This is where trials happen.

In our current system, Congress has established 94 District Courts. Each state has between 1 and 4 District Courts. The District of Columbia and Puerto Rico also have the same kind of court. They are considered "constitutional" courts. All of these were established by Congress under the powers of Article III of the Constitution of 1789.[8] We have several others established for the territories, which are considered legislative or "Article IV" courts,

[8] **Constitution of 1789,** Article III, Section I: "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."

because they are established under powers the Constitution of 1789 grants Congress with respect to Territories.[9] They are structurally different, and the judges serve different terms.

In any case, this Charter establishes a single court in every congressional district. That means more than quadrupling the number of district courts, though not necessarily the number of judges (more on that shortly). It also means that, since each territory has a full voting member in the House of Representatives, it also has a fully equal district court. There is no longer a distinction between them.

This clause also clearly lays out the district courts' duties. They are trial courts. They can also hold hearings on behalf of higher courts (most likely the Provincial Courts), if those courts instruct the district court in question to do so. Otherwise, they don't handle appellate matters.

> The Court of Federal Claims is abolished in full. All matters previously considered by that court are now fully justiciable in the District Courts.

Well, *that's* abrupt. Why abolish a court in full and fold its functions into the District Courts? What's that about? First, the Court of Federal Claims, under our current system, is an "Article I" court, meaning it isn't bound by the same rules as the so-called "Article III" courts. That's problematic on its own. But it also exists because of its purpose and a feature of the current law.

[9] **Ibid.,** Article IV, Section 3: "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States…."

In our current system, there is a principle called "Sovereign Immunity." In very simple terms, it means that a person can't sue the government unless the government decides to let them. Yet the government pays people, grants them land under certain conditions, and so on. What's the redress for these people? Congress set up the Court of Federal Claims to get around Sovereign Immunity (kind of). This Charter abolishes the Sovereign Immunity doctrine in Article V.[10] Without Sovereign Immunity in play, there's no need for a weird court to handle claims. They can go back to the District Courts, where they belong.

> Each District Court must have at least one dedicated Tax Bench. These specialized benches shall be dedicated specifically to matters of Tax Law. They shall be staffed by judges with appropriate expertise, as provided by law.

Currently, except in criminal cases, tax disputes are heard in the so-called Tax Court. This is another not-really-a-court tribunal established under Article I. It is part of the IRS (how do you spell 'conflict-of-interest'…) and is, therefore part of the Executive Branch. This Charter bans all tribunals outside of the Judicial Branch,[11] so those disputes have to go somewhere. Still, tax law is very specialized. Here, the Charter makes a concession. It requires tax law to be decided in the District Courts, but it also requires specialized judges and benches in each District Court for the purpose of handling these cases. So tax law gets rolled back into the federal judiciary, where it should be, but the special expertise required for it is retained.

[10] *See* **National Charter of the United States** (unratified), Article V, Section 7 – Prohibition of Sovereign Immunity.
[11] *See* **Ibid.,** Article IV, Section 1.C. Ban on Courts Beyond the Judicial Branch**.**

> The size and composition of each District Court, except as limited by this Charter, shall be established by law. Congress must ensure that each court is of sufficient size to handle the normal caseload for its jurisdiction.

Congress decides how big each District Court should be, with the caveat that they are required to make sure it's big enough to handle its normal caseload. The language doesn't say "full" caseload or "any cases that may arise" or any other expansive phrase like that. Backlogs can exist, but they can't be normalized. Nobody should take this charge to Congress as a mandate for judicial bloat.

I promised you a note about the number of judges, remember? Here it is. This clause directs Congress to ensure each court is of "sufficient size to handle the normal caseload…." Since there will be more courts in total, each court is likely to be smaller. The number of judges will likely need to increase to meet the logistical burden of more courts in total. However, the smaller size most of them will mean fewer judges per court, which will limit that expansion.

***Article IV, Section 2.B.3. Court of International Trade***

> There shall be a Court of International Trade, headquartered in New York City, which shall have original jurisdiction on all legal matters involving foreign trade into or from the United States. Appeals shall be sent to the Federal Provincial Appellate Court for New York, and further appeals shall proceed upward accordingly.
>
> This Court shall be composed in the same manner as the Court of International Trade in effect at the time of ratification of this Charter. Congress must maintain this Court but may change its size or structure as need requires.

This clause really does only one big thing. It ensures the Court of International Trade's continued existence. If, like me, you'd never heard of this court until now, you could be forgiven. It's a very specialized court that exists away from the limelight.

That doesn't mean it is unnecessary or unimportant.

For the whole history of the United States, trade has been an important issue. The handling of trade disputes was one of the key issues that motivated the Founders to draft and ratify the Constitution of 1789. In today's global marketplace, none of that has gotten simpler. Trade law is bewildering and highly specialized – ask anyone who has ever had to prepare a Commercial Invoice for goods being sold to an overseas customer (trust me, it's a pain). So, Congress authorized the Court of International Trade. It deals exclusively with, well…international trade. It's a vital role, and the Court works, so this provision carries it forward "in the same manner as…in effect at the time of ratification of this Charter." In

other words, it's the same court. It also gives Congress the authority to modify its structure in the future, if necessary.

***Article IV, Section 2.B.4. Federal Provincial Appellate Courts and the Territorial Provincial Appellate Court***

> The Federal Provincial Courts serve as the first level of federal appellate review. These courts hear appeals from District Courts within their assigned regions.

This is a simple, declaratory subclause which will likely sound like a canon shot, thundering across the judicial landscape. The first level of appellate review is no longer the Circuit Courts. A new level of court is established in Article IV, Section 2.A, and here we've encountered its purpose for the first time.

The obvious question is, why is another layer of courts needed? It already seems to take forever for cases to wind their way through the system all the way to the Supreme Court, when necessary. There is not one reason; there are two.

First, the Circuit Courts' caseload is so high that they are overburdened. A layer of courts (51 of them) before cases reach the Circuit Courts (only 13 nationwide at present) will relieve that burden. It's likely that this expansion will speed up progress for those cases requiring the full path of appellate review. They won't languish as long in queue on the Circuit Courts' dockets.

The second reason for the expansion is democratic service. What do I mean by that? By establishing a Provincial Court in each state and mandating the availability of one in the territories, this Charter brings the appellate court closer to the people. They're more likely

to appeal if they don't have to travel as far. How many cases would have had a legitimate chance at a successful appeal, but travel to the Circuit Court was too high a burden, so the appeal was never filed? Who knows? It may be many, or it may be few, but it is certainly more than one, and one is too many.

Provincial Courts may:

- Review how law and procedure were applied in the original trial,
- Affirm, reverse, or remand cases for further proceedings.

They may not conduct new trials or reexamine findings of fact, except where a procedural error or a clear violation of Rights has undermined the fairness of the original proceeding. Even in those circumstances, they may declare a mistrial, with or without an order for new trial in the appropriate District Court, but may not conduct a new or supplementary trial, themselves.

Provincial Courts may also hear additional matters assigned by law, so long as those duties are consistent with this Charter.

This is a very clear statement of the Provincial Courts' appellate purpose and scope. They are appellate courts only, with a narrow carve-out for other matters assigned by law. They can't and don't conduct trials. This ties to the right to the Final Verdict of a Jury.[12] The wording here also preserves the protection against double jeopardy the way it is intended, by only allowing an order for a retrial when declaring a mistrial.[13] It also keeps trial

[12] *See* **National Charter of the United States** (unratified), Article I, Section 2.B.2(v). Right to the Final Verdict of a Jury.: "Judicial review on appeal can only consider the application of law and procedure, not the jury's findings."
[13] *See* **Ibid.,** Article I, Section 2.B.2(w). Protection from Double Jeopardy. . "If a trial ends without a verdict – such as through a mistrial – it may be tried again. But if a verdict is reached, the case is final."

proceedings at the District Court level, which is where they belong. The Provincial Courts' full name is Provincial *Appellate* Courts. They are intended to be appellate in nature. Full stop.

> Each State shall have one Provincial Court with jurisdiction over appeals from the District Courts located in that State.

This is pretty clear. It defines the territorial jurisdiction of the Provincial Courts.

This also seems like a good place to address the name. Although the U.S. states are functionally our provinces, we don't generally use that word in our political discourse. Why use it here? The answer is simple. I chose the term "provincial" specifically to avoid confusion with the courts of the state governments. If I had called the State Appellate Courts, there would be endless confusion about which court was intended when they were referred to. The word "provincial" sidesteps that confusion.

Sometimes, it's just a cigar.

> The Territorial Provincial Court shall hear cases arising in any of the other Territories of the United States, except where otherwise provided for in this Charter. The Territorial Provincial Court shall maintain courtroom facilities in each Territory. Existing District Court facilities may be used as needed.

This sets up the same structure for the territories as for the states. Because there's only one Provincial Court covering *all* territories (except for the District of Columbia), there is a positive requirement here that facilities need to be available in each territory. To that end,

explicit permission is constitutionally granted to use District Court facilities for that purpose, if necessary. The goal is for the court to be close to the people.

***Article IV, Section 2.B.5. Federal Circuit Courts of Appeal***

> Circuit Courts of Appeal serve as the second level of federal appellate review.

This is clear and establishes that the Circuit Courts are an "appeal of appeal" level of courts.

> There shall be twelve regional circuits and a Federal Circuit. The regional circuits shall have territorial jurisdiction over their regions as defined below, while the Federal Circuit shall have special jurisdiction for matters for which it had jurisdiction at the time this Charter was ratified and additional matters as later prescribed by law.

This subclause defines the structure and jurisdiction of the Circuit Courts. This is strictly procedural, and it preserves the current federal structure, including the Federal Circuit's subject-matter jurisdiction.

It's worth mentioning that the Federal Circuit is a special case. The twelve regional courts have territorial jurisdiction, but the Federal Circuit has nationwide jurisdiction. How does that work? Its jurisdiction isn't based on geography; it's based on subject matter, such as patent law and government contracts. These cases involve specialized areas of law with nationwide impact. This clause preserves that special role.

"Wait, this gives Congress the power to assign more duties to the Circuit Courts." That's true. But that's already the current practice. The Constitution of 1789 leaves the duties and structure of all courts below the Supreme Court to Congress.[14]

[14] *See* **Constitution of 1789**, Article III, Section 1.

Congress shall define the number of judges for each circuit in law, but no circuit may have fewer than six seats, and the number of seats on any circuit must be divisible by three. Circuit courts consider cases in panels of three judges, unless the court, as a whole, agrees to hear a case *en banc* or is instructed to do so by the Supreme Court in a remand order.

Another procedural subclause that endows Congress with the power to decide the number of judges on any court, as long as that number is divisible by three.

"What an odd requirement!" The reason for it is apparent in the next sentence: the default is for a panel of three judges to hear a given case. An option exists for the court to decide it wants to consider a case *en banc,* that is to say, the court as a whole considers the case, rather than a three-judge panel. It's also explicit here that, if the Supreme Court remands a case back to the Circuit Court, it can order an *en banc* review. *En banc* reviews, in practice, are usually reserved for very complex or important cases that will have a broad impact, though any case can theoretically be considered *en banc.*

Circuit Courts are responsible for:

- Ensuring uniform interpretation of law across the nation,
- Reviewing constitutional questions, legal standards, and procedural fairness,
- Resolving conflicting rulings between different Provincial Courts,
- Affirming, reversing, or remanding cases to the Provincial Courts.

This is the Circuit Courts' core legal jurisdiction. Note that there is no mechanism for a trial here. Just as with the Provincial Courts, these are strictly appellate courts.

> Circuit Courts have appellate discretion and may grant certiorari. A grant of certiorari requires at least two judges on the court to agree to consider an appeal. If the court agrees to hear an appeal, it decides whether to consider the appeal *en banc* or by panel. If the court declines to consider a case *en banc*, the Administrative Office of the United States Courts will randomly assign three of the judges on the court to a panel to consider the case.

I noted in the commentary for Section 2.B.2 that the Circuit Courts under our current system are overloaded. The addition of the Provincial Courts resolves that burden in two ways. We explored the first while discussing the Provincial Courts – there are more of them, so they're better equipped to quickly hear appeals and resolve them.

The second way the Provincial Courts resolve this overload is through appellate discretion. Under our current system, only the Supreme Court has this discretion. SCOTUS ignores an appeal unless enough justices agree to take up the case. This subclause creates a similar mechanism for the Circuit Courts, which is possible only because the Provincial Courts have already had a first crack at the case. Now, the Circuit Court can consider the Provincial Court's ruling and the filed appeal to decide whether the case merits further review.

The way that works mirrors the mechanism used by the Supreme Court, in miniature. The mechanism for the Supreme Court is called the "Rule of Four," that is, four justices have to agree to consider a case, or the Circuit Court's ruling stands. Under this Charter, there is a

mechanism that could be called the "Rule of Two," which works exactly the same way. If two judges on the Circuit Court agree that the case merits further review, they can agree to consider the case. Otherwise, the Provincial Court's ruling stands.

If the Circuit Court grants *certiorari (a fancy term that just means they agreed to hear the case),* they decide whether to hear it en banc. Depending on the outcome of that decision, they either hear it as a whole court or the Administrative Office of the United States Courts[15] assigns judges to a panel to hear the case.

That's all pretty complex, but the complexity serves real purposes – how many courts are there, how big are they, what are they responsible for, how do cases get to them, and how are they heard once they get there?

Article IV, Section 2.B.5(a). Circuit Court Citizen Commissions

> Apolitical commissions shall be used to review the boundaries of the Circuit Courts of Appeal. These review commissions shall convene five years after each decennial census and may only be convened at that time.
>
> The commission shall consist of:
>
> - Two (2) members selected by the Judicial Nomination Board,
> - Two (2) members selected by the Federal Licensing Authority, and

[15] *See* **National Charter of the United States** (unratified),

Article IV, Section 6.A. Administrative Office of the United States Courts (AOUSC).

- Three (3) Citizens selected at random in a manner prescribed by Congress.

No citizen member of a commission may currently hold elected or appointed federal office or have done so within the past six years. All members, including those from the judicial agencies, must be adult Citizens and must not have been convicted of a felony at the time of selection.

Populations and caseloads shift over time. This subsection handles the administrative problem of keeping the jurisdictional boundaries of the Circuit Courts current with that reality. It establishes the timing, purpose, and mechanism for doing so. It blends citizen participation with bureaucratic input from the judicial branch to resolve the question every ten years, in what is traditionally a less politically charged year (midway through a decade).

The very first word here is "apolitical." That word is a deliberate choice. It's aspirational, not procedural. The point is that these are designed to ignore the existence of partisanship and politics. Will they do that perfectly? Probably not, but the aspiration is clear, and the mechanism is built to serve it.

There are two agencies listed here that the reader may not be familiar with because they are established by this Charter: the Judicial Nomination Board and the Federal Licensing Authority. We'll discuss each more fully in the commentary for Article IV, Section 6, but a brief explanation is reasonable here.

The Federal Licensing Authority, or FLA, is an independent office within the judiciary charged with overseeing professional and ethical conduct in the courts.

The Judicial Nomination Board, or JNB, is also an independent body within the judiciary, charged with ensuring that judicial appointments are based on merit and free from political influence.

The work of redrawing geographic jurisdictional boundaries for courts doesn't fall within the core mission of either the JNB or the FLA, so why include them? They are independent agencies made up of legal professionals with first-hand knowledge of caseloads and other factors affecting court workload. Their core missions speak directly to operational concerns the courts face. They complement the citizens' perspectives to form a commission grounded in a firm understanding of the courts and reflective of the sovereign voice of the citizens.

Finally, the membership can't be felons, and the three citizen members can't be current or recent federal officials.

Failure to participate in a commission may be considered partial grounds for the charge of Failure to Fulfill a Civic Duty.

Each Circuit must include at least three (3) States, and no Circuit may divide a single State. The Circuit Court in whose region Maryland is located shall also serve the territories, including the District of Columbia.

> Recommendations must be approved by a majority vote of the commission and submitted to Congress. Congress must vote, by simple majority in both chambers, to either accept or reject the proposal without amendment. If Congress does not act within ninety (90) days, the recommended boundaries shall take effect by default at the start of the next Judicial Year. If Congress rejects the recommendations, a new commission is formed and the process repeats.

This clear language ties the process up neatly with a pretty bow. The rules for drawing the map are simple and clear. The commission submits its recommendations; Congress acts or doesn't in 90 days. Depending on the outcome, the recommendations will take effect the following year[16], or the process starts over. Simple and clean.

***Article IV, Section 2.B.6. The Supreme Court***

Article IV, Section 2.B.6(a). Court Composition

> The Supreme Court shall consist of nine (9) Justices, the most senior of whom, as defined in Article IV, Section 3.A.2, shall be the Chief Justice and the others Associate Justices. The Court shall sit *en banc*, and may only do so provided no more than two (2) Justices are absent.

How many justices should be on the Supreme Court? Well, right now, that depends on who you ask. The current conservative skew of the Court is troubling many on the left. Some have openly called for packing the Court. That is, waiting for a president from the

[16] The Judicial Year begins on October 1.

Democratic Party, then seating enough justices to balance (or, if they're really being honest, override) the conservative majority.

"They have lifetime appointments," these partisans say. "It will be at least a generation before this can be fixed, and this court doesn't reflect the American people at large."

"The liberals want to overthrow law and order! The court is not *supposed* to reflect popular sentiment from moment to moment; it's supposed to faithfully interpret and apply the laws," goes the predictable response.

As much as I abhor "both-sidesism," there is some truth on both sides of this debate. There's also deliberate omission on both sides of it.

The Court *should* be steadier than public opinion. It's true. If the high court shifts every time popular opinion does, there's no continuity in law, and that makes for an unstable, and frankly dangerous, legal environment.

On the other hand, the Court shouldn't look partisan, either. That leads to distrust, and ultimately delegitimacy, which is also very dangerous.

The truth is, keeping the Court fresh is preferable to ensuring a majority that agrees with popular opinion. The size of the Court is and should be a *functional* consideration, not one steeped in preferred outcomes.

So it's long past time to end discussions about "court-packing." This clause defines the Court's size. Alone, that is a big change. Under the Constitution of 1789, there's no constitutional definition of the Court's size.

It also specifies that the Chief Justice will be designated by seniority rather than by the President's appointment. This is a big deal, too. It's designed to help depoliticize appointments (to the extent that is even possible).

The rest of this subclause is procedural detail to ensure the legitimacy of court proceedings. The quorum requirement is insurance against a Court acting without a near-full bench. That reinforces the perception of its rulings as legitimate.

Article IV, Section 2.B.6(b). Role and Jurisdictions

> The Supreme Court is the highest Court in the United States. It has final authority over all constitutional matters and serves as the ultimate appellate forum for decisions made by lower federal courts.

These two sentences re-establish the power of the Supreme Court of the United States of America. This is a court of awesome power and authority. To many Americans, it is the embodiment of the federal judiciary. This subclause also explains the court's primary purpose. Just in case the name is too subtle, the Supreme Court is the highest court in the land.

> It also holds original and exclusive jurisdiction over cases between two or more States, between a State and the Federal Government, in unresolved Legislative Rule disputes, or in cases between the Executive and Legislative Branches of the Federal Government.

The Court has some additional jurisdiction that the previous paragraph doesn't clearly specify. This one closes that gap.

There are certain matters that simply don't fall neatly into a District Court. For example, what about legal disputes over the interpretation of chamber rules in Congress?[17] Those carry the force of law under this Charter, and someone will have to interpret those rules when the parties involved can't agree. Another example: Which District Court would hear a case between two states? These are simply questions of such broad scope that they belong in the sole purview of the Supreme Court.

Article IV, Section 2.B.6(c). Original Jurisdiction Mechanism

> In such original jurisdiction cases, a group of Circuit Court judges shall be randomly selected to join the hearing. The number of these judges must be one fewer than the number of Supreme Court Justices participating. All judges—Supreme and Circuit—shall hear the case, review the facts, and vote. The votes of the Circuit judges shall be recorded and shared with the Supreme Court Justices, but shall remain confidential unless an appeal is filed.
>
> The final ruling shall be determined solely by the votes of the Supreme Court Justices—unless the losing party files an appeal within ninety-six (96) hours. If such an appeal is filed, the votes of all participating judges, including Circuit judges, shall be

[17] *See* **National Charter of the United States** (unratified), Article II, Section 1.C.3. Chamber Rules of Procedure.

unsealed and counted together. That outcome is final and shall be treated as the decision of the Supreme Court.

This special procedure applies only to cases where the Supreme Court exercises original jurisdiction. It does not apply to appeals from lower courts, which follow the standard procedures set forth by this Charter and by law.

This is a wholly new provision with no precedent that I know. Here's the problem that it's trying to solve. What happens when an appeal is needed for a case where the Supreme Court has original jurisdiction? Where does that appeal go? The case is already at the top of the ladder.

This procedure creates a sort of "instant appeal" process. There isn't a separate filing of briefs or oral argument, but there *is* a secondary ruling. This bit is a little quirky, so hang in there with me.

Let's say Vermont has filed a suit against Connecticut over some issue of Federalism (the specific issue doesn't matter in this example). The Supreme Court has original jurisdiction, so it's the court that should hear the case.

But since it's an original jurisdiction case in the Supreme Court (because it's between two states), we select eight Circuit Court judges at random. *They also hear the case.* They get all of the briefs, they participate in oral arguments, the whole thing.

Once all arguments are concluded, the eight judges independently render an opinion on the case. That opinion is shared with the justices of the Supreme Court to inform their decision, but it isn't binding or public. Yet.

The Supreme Court, with that opinion in hand, forms its own opinion, which *is* binding and public, in the usual manner. There's nothing so far that ties the hands of the Supreme Court. It remains free to rule differently from the eight Circuit judges.

If the losing side believes there is an appeal to be made, they have four days to file it. This isn't an appeal in the same sense as with other appeals, because argumentation is irrelevant. They're just declaring, "We think this wasn't correctly decided." At that point, the sealed opinion and votes of the Circuit judges are opened, and all the votes of the Justices and judges are counted *together*.

The new result is binding and constitutes the Supreme Court's decision on the matter. Not, "Oh, well, the B-Team overruled the A-Team." No, this is an expansion from the 26-man roster to the 40-man roster because it's the playoffs.[18]

Does this mean every original jurisdiction case will end up in this "instant" appeal? Not necessarily. There is one fewer Circuit judge than Supreme Court Justices. If the Court rules unanimously, appealing is pointless. If the rule is nearly unanimous, it isn't pointless to appeal, but it's unlikely to succeed. There is a broad consensus. The place it will be most

[18] In Major League Baseball, teams can add to the pool of players they can choose from for a given series during the playoffs. It used to expand to 40 players. The MLB rules are a little more complicated now, but the analogy holds.

useful is on sharply divided decisions, especially those with a partisan bent (or the appearance of one).

Article IV, Section 2.B.6(d). Appellate Discretion

> The Supreme Court possesses appellate discretion. The Court shall grant *certiorari* when any four justices agree to consider an appeal. If *certiorari* is not granted within forty-five (45) days of appeal, the appeal is considered denied, and the ruling of the originating court stands.

This simply constitutionalizes what is already current practice. It's called the "Rule of 4."

The Supreme Court does not accept every appeal that is filed. There is one procedural refinement worth mentioning, though. If the Supreme Court doesn't agree to consider an appeal within a month and a half, the original ruling stands, and the appeal is considered denied. This simply puts a finite end to the question.

Article IV. Section 2.B.7. Prohibition Against Judicial Self-Volition

> The Courts of the United States at all levels are prohibited from compelling testimony, issuing injunctive or declarative relief, or issuing decisions or rulings of their own volition. To that end, they may take such actions only in cases brought before them by other parties with standing.

What keeps the Courts from pre-emptively intervening on matters of law? This is a huge question. Especially with respect to appellate law, they have immense power to shape or overturn law, or even to create precedential doctrines. That's necessary, but it comes with

a danger. This subclause ensures, constitutionally, that the Courts don't and can't intervene unless someone else *asks* them to via an actual lawsuit. And that someone has to be someone with standing.

This provision is aimed directly at the concept of *sua sponte,*[19] meaning a court acting on its own accord, without being asked by either party. The traditional view is that courts can act to preserve the law's correctness. But isn't it the counsel's duty to hold that line? Yes. It is. Counsel is supposed to ask for motions of dismissal, object to lines of questioning or forms of evidence, and so on. The Court is supposed to adjudicate those disputes, not raise and resolve them on its own. Allowing a Court to do so risks accretion of judicial power. This Charter's judiciary is already quite robust enough. This is a check.

The legal boundaries of our Republic belong to the Citizens. What this does is retain that. It forces any disputes in a case to be brought to light by the People through their counsel. That's the right distinction.

[19] That sounds like a variety of wine, doesn't it? I think it may be well past time to abandon the practice of naming things in Latin. But that's a personal preference, not a matter within the scope of this project. Even though I now have to add *that* term to the glossary.

**Article IV, Section 2.C. The Judicial Year**

> The Judicial Year shall begin on October 1 and end on September 30 of the following year.
>
> Judicial terms defined in this Charter begin on the first day and expire on the last day of the appropriate Judicial year. The starting date may vary when filling vacancies mid-term, but the ending dates are fixed.

This is a procedural subsection. The October-to-September timing aligns it with the federal fiscal year[20] and establishes the official start and end dates for judicial terms defined elsewhere in the Charter.[21]

I wish I had something wise, witty, or clever to say about this. Unfortunately for me, I've got nothing. On the other hand, you may be relieved.

[20] *See* **National Charter of the United States** (unratified), Article II, Section 4.C. Spending.
[21] *See* **Ibid.,** Article IV, Section 3.A. Judicial Terms.

## Article IV, Section 3 – General Provisions of the Judiciary

### Article IV, Section 3.A. Judicial Terms

Judicial entrenchment.

That's where judges remain in office long enough to stagnate legal interpretation.

Americans are skeptical of lifetime judicial appointments. "Unelected judges with lifetime tenure" is a refrain that comes up over and over again across the partisan divide (which specific judges a given group is railing against varies, but the general concept holds).

People distrust judges who sit on the bench for decades. They ask for someone younger, someone more "in touch."

This subsection takes on that problem head-on.

> Federal Judges may not be reappointed to the same level or a lower level of court within the Judicial Branch after their term ends.

First, judges can only serve a single term at a given level. The Charter allows promotion upward, but they can't move down or stay at the same level. Obviously, this depends on the concept that a term has an end. "OK, but how long is that?" We'll get to that; it's coming next, but let's finish talking about this sentence first.

Why is this odd little nugget here? Why not just set the term limits and move on? It's a reasonable and obvious question.

It's true that we want to avoid entrenchment, but we also want to ensure higher courts are filled with judges who have experience and have demonstrated competence. This system builds the scaffold for a meritocratic ladder.

***Article IV, Section 3.A.1. Term Limits for Federal Judges***

> Magistrate Judges serve until they resign, retire, or are dismissed.

Magistrate Judges serve in a judicial support role. They are discussed in greater detail in Article IV, Section 3.E. They are employees of their Court. They assist with judicial workload and exercise a measure of judicial authority, but they serve at the Court's discretion, like other staff.

> Federal and Territorial District Court, Court of International Trade, Federal and Territorial Provincial Appellate Court, and Federal Circuit Courts of Appeal Judges shall each serve a single non-renewable term of six (6) years.
>
> In all of these Courts, a partial term counts as a full term, and the Judge so serving shall be reckoned as if they had served the full six years concerning eligibility for other Courts, as long as they served at least eighteen (18) months.

This breaks lifetime appointments. A judge gets appointed and confirmed, serves six years, then they are done. That's it. I'll also draw your attention to the sentence on partial terms. No gaming the system to serve longer with a full term tacked onto a partial one.

Since qualification for higher courts rests on having served a term on lower ones,[1] partial terms mostly count as full terms for that purpose. That way, a qualified judge doesn't get cheated out of a chance to advance just because they accepted an appointment for a partial term.

> Nothing in this clause prevents a Judge from being considered for appointment to a higher court, as long as they meet the qualifications for that Court.

This is the next stone in the meritocratic edifice. Your term in a court is your term, and you can't be reappointed. But you *can* be appointed to a higher court. This language makes that explicit, so that there's no confusion.

***Article IV, Section 3.A.2. Term Limits for Supreme Court Justices***

> Supreme Court Justices shall serve a single non-renewable term of eighteen (18) years. One new Justice shall be appointed every two years.

Another blow to lifetime appointments, this time at the Supreme Court. This is a little less drastic in scope – the term limit here is 18 years – it still reduces the "death watch" and "political timing" that plague our current Supreme Court system. The rotating appointment every two years is intended to keep the high court both fresh and stable.

It also ensures that, absent retirements, removals, or deaths, each President gets to make two appointments per term. That preserves the "elections have consequences" doctrine.

[1] *See* **National Charter of the United States** (unratified), Article IV, Section 3.B. Qualifications.

But it also smooths out the political stakes of any *single* appointment. For more on nomination and confirmation, I'll refer you to Article IV, Section 3.C.

> If a Justice is appointed to fill a vacancy mid-term, they shall serve only the remainder of that term and may not be reappointed.

This is the same requirement as for lower courts. This Charter is adamant about term limits. That's because the people are tired.

> The Associate Justice with the longest continuous service on the Supreme Court shall become the Chief Justice upon the Chief Justice's departure from the Court. Where seniority is in question between Associate Justices, that seniority descends based on their time on the Supreme Court.

In Article IV, Section 2.B.6(a), we briefly touched on this.

Currently, the Chief Justice of the Supreme Court is appointed *to that role* by the President. Chief Justice Roberts, for example, was appointed directly to the Court as Chief Justice, having never previously served on the Supreme Court. This is fine and has functioned in practice for some time.

So why change it, then?

The Chief Justice wields enormous power. They choose who writes the Opinion of the Court in any given case. That shapes legal doctrine into the future. Under this Charter, they also have other duties and functions that carry significant weight.[2]

By assigning the longest-serving Justice to the role, the Charter accomplishes two goals. First, it removes a potentially problematic appointment from presidential hands. Second, it spreads the weight of the Chief Justiceship across many appointments. No one nominee carries the burden, but all potentially do, years down the line.

**Article IV, Section 3.B. Qualifications**

All Magistrates and Judges must meet specific qualifications before taking office. These qualifications must be satisfied at the time of nomination and maintained throughout the Judge's term.

A candidate or nominee must:

- Be licensed and in good standing with the Federal Licensing Authority,
- Not have been disbarred or barred from holding federal office,
- Not have been convicted of a felony, or
- Not have been removed from judicial office for cause.

[2] The Chief Justice is responsible for submitting the budget for the entire Judicial Branch (*See* Article II, Section 4.C.4). They also sit on the Use of Force Advisory Council (*See* **National Charter of the United States** (unratified), Article III, Section 2.A.1. Commander-in-Chief), which helps authorize the President in the use of covert offensive military force without a Declaration of War. There are other assorted official and ceremonial duties assigned to the Chief Justice, as well.

These are the minimum qualifications to be a Magistrate or a Judge. If we take the detailed bullets away, they boil down to this: these people have to be licensed, competent lawyers without their own ethical or criminal baggage.

I'll offer a complete discussion of the Federal Licensing Authority in the commentary for Article IV, Section 6.B, where this Charter creates it. Its purpose is "to ensure professional and ethical standards for federal judges and attorneys."[3]

Minimum experience requirements:

- **Magistrate Judges:** At least three (3) years of legal experience in the federal court system.
- **Immigration Court Judges:** At least five (5) years of legal experience in immigration law.
- **District Court Judges:** At least five (5) years of legal experience in the federal court system. For tax specialists, the minimum requirement is five (5) years of experience with tax law.
- **Court of International Trade Judges:** At least five (5) years of legal experience, with specialization in international trade law.
- **Provincial Court Judges:** At least eleven (11) years of combined federal-level experience in legal practice, service as a District Court Judge, or full-time faculty employment at a U.S.-accredited law school. Legal academics must also demonstrate sustained engagement with the federal

[3] *See* **National Charter of the United States** (unratified), Article IV, Section 6.B. Federal Licensing Authority (FLA).

courts, including authorship of amicus curiae briefs in constitutional or appellate matters.

- **Circuit Court Judges:** Must have completed a full term of service on a Provincial Court.
- **Supreme Court Justices:** Must have served at least three (3) years on the Circuit Court.

The first clause listed *general* qualifications that apply to all levels of Magistrates and Judges. This clause breaks down the specific experience and technical requirements for each type. This continues with the theme in this charter of building a judiciary based on experience and merit. Each level builds on the experience from the ones before. There are pathways into Provincial judgeships that recognize highly competent and distinguished service. That pathway may be either as private lawyers in the federal system or academics who, in addition to their academic credentials, have engaged directly with the federal judiciary. The goal isn't exclusion; it's about ensuring the best and brightest serve on the courts that serve the American people.

A nominee who has not served on the Circuit Court may still be eligible for the Supreme Court if they meet all the following:

1. At least twenty (20) years of experience in constitutional litigation, legal scholarship (as defined in the qualifications for the Provincial Courts), or federal appellate practice;
2. Personal argument of at least three (3) constitutional cases before a U.S. Circuit Court or the Supreme Court; and

3. Has been cited in at least two (2) published majority opinions from a U.S. Circuit Court or the Supreme Court.

Just like with the Provincial Courts, there is an opening here for Supreme Court nominees who haven't followed the traditional pathway. But they can't be just any Tina, Delilah, or Harriet. They have to be exceptionally accomplished and distinguished jurists, whose constitutional thinking is of enough stature to have caught the attention of the highest levels of the federal judiciary, even though they haven't been judges.

**Article IV, Section 3.C. Appointment and Confirmation**

***Article IV, Section 3.C.1. Nomination***

The President must nominate each Justice of the Supreme Court and each Judge of the Circuit, Provincial, Court of International Trade, District, and Immigration Courts when a term ends or a seat becomes empty. Predictable vacancies can be pre-nominated up to forty-five (45) days in advance of the scheduled vacancy. In those cases, a nominee who is confirmed in advance shall take office on the first day of vacancy. All other vacancies require a nomination within five (5) days of a vacancy.

Full judges and justices have to go through the appointment and confirmation process, ensuring the Executive and Legislative Branches get their say in who is in the Judiciary. Why? Because, unlike the President and Members of Congress, judges are unelected. Since that's the case, the elected branches represent the people by weighing in on who serves as a judge. This is a check on the Judicial Branch. That's basic high school civics, right? The Judicial branch is the place where the American people will most likely turn for relief from

an overreaching Executive or Legislature. This is where the Executive and Legislature protect the people from the reverse: an overreaching Judiciary.

Added to that, for the first time, the Nation's foundational law explicitly grants authority to nominate and confirm new judges *before* they are needed. This is only possible to a limited extent due to term limits, which provide some predictability about when vacancies will arise. When a vacancy is predictable, the President can appoint *in advance,* allowing the confirmed nominee to take office immediately upon their predecessor's departure. This is an improvement because it reduces disruptions to the court system while the American people wait for a bench to be filled.

> Any nominee must come from the list of candidates provided for that level of court by the Judicial Nomination Board. The President must send the nomination in writing to the Leader of the Senate.

What the heck is the Judicial Nomination Board, and why are they gatekeeping a list of nominees? The Judicial Nomination Board (or JNB) is an advisory board set up by this Charter. There is an extensive subsection in Article IV, Section 6 that explains them in full, but their purpose is to "identify and approve qualified candidates for appointment to the federal courts of the United States."[4]

The idea is that the President can nominate judges, but only from a pre-vetted pool of candidates. Why?

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[4] *See* **National Charter of the United States** (unratified), Article IV, Section 6.C. Judicial Nomination Board (JNB).

Two reasons.

First, the competence/continuity argument. This one is purely about efficient and effective governing. The President[5] doesn't spend a lot of bandwidth searching hundreds of candidates. They look at a short list and select from there. It reduces the burden of the vetting process, making nominations easier and faster for the White House.

The second reason is political. No reasonable and rational observer could possibly look at the last century (or more?) of appointments to the judiciary and fail to notice a partisan or doctrinal trend in who gets appointed by whom. Everyone knows it. It's most visible on the Supreme Court, but it happens in other courts, as well. If you don't believe me, ask yourself this: why, when reporting on a controversial case, is the press careful to ensure the reader knows who appointed the judge in question?

A pre-vetted pool of potential nominees selected by a more neutral body won't eliminate that trend, but it will "flatten the curve" between extremes.

***Article IV, Section 3.C.2. Confirmation***

> Within thirty (30) days of receiving the nomination, the Senate must hold a single yes-or-no vote on the nominee. A simple majority of Senators present and voting is sufficient to confirm.

[5] In practice, though no one admits it out loud, it's the President's political staff that does this work most of the time. That isn't necessarily an indictment. It's a reality of politics and of limited resources. The President has to deliver policy outcomes, and they are extremely busy. They can't spend several days poring over candidate lists.

Thirty days after the nomination, there will be a vote, unless it's done earlier. This has been an ongoing problem for several presidential administrations. As I am typing this, the best data I can find (from the American Constitution Society) shows 52 vacancies across the District Courts, the Court of International Trade, and the Circuit Courts.

That's appalling, yet it's well below the averages since 2000, which have trended at or slightly above 100 vacancies at any given time. Coupled with the preceding clause (Section 3.B.1), this will help eliminate those vacancies. No holds, no indefinite waffling.

Just a simple yes or no.

What about the simple majority? Why is that specified? Because each chamber, including the Senate, can set its own rules. This prevents a back-door rule that could make it difficult or impossible to confirm a nominee.

***Article IV, Section 3.C.3. Term Commencement***

> If confirmed, the nominee's term will begin at 8:01 a.m. local time in the Nation's capital on the first day of the Judicial year or the first day after the Senate confirmation vote, whichever is earlier.
>
> Alternatively, if the appointment was made and confirmed before the bench became vacant, the nominee's term begins on the first day of the vacancy.

I included this clause just to forestall any ambiguity about when a newly confirmed judge takes office. As far as I am aware, that question has never been an issue, but this language prevents it from becoming one in the future.

### *Article IV, Section 3.C.4. Deferral of Duties*

> If the nominee is already a Judge on a lower court, they may choose to delay starting their new duties for up to sixty (60) days to complete or hand off any work still in progress. Even if they delay starting their new responsibilities, their term still begins at the time specified in Article IV, Section 3.C.3.

This language is administrative. It provides a transition time for a judge elevated from a lower court mid-term. This is likely to be rare, but it could theoretically happen.

### *Article IV, Section 3.C.5. Continuation of Appointment Process*

> If the Senate does not confirm the nominee, the President must pick another candidate from the current list within five (5) days. This process will repeat until the vacancy is filled with a confirmed nominee.

This works with Sections 3.B.1-2. It precludes a President nominating a candidate whom the Senate is certain to reject[6] then throwing up their hands and saying, "Well, I tried." The Charter demands that the process repeat until a vacancy is filled. End of story.

## Article IV, Section 3.D. Vacancies and Partial Terms

### *Article IV, Section 3.D.1. Causes of Vacancy*

> A judge's bench becomes vacant when:
>
> - Their term ends,

[6] The purpose of the Judicial Nominations Board is to preclude improperly vetted nominees in the first place, but politicians *will* politick, and it would be naïve to ignore that reality.

- They die,
- They resign by notifying the Chief Justice, or in the case of the Chief Justice, notifying the President,
- They are removed for misconduct under the rules in this Charter,
- A senior Justice of the Supreme Court provides a notification that the judge or justice in question has been found medically incapable as provided for in Article IV, Section 3.H.2.

Since "vacancy" is a term of art used throughout Article IV, this clause defines what a vacancy is. It's important because defining the term avoids misinterpretation and malinterpretation.[7] Defining the term here, even though it seems like I'm being pedantic, prevents a Frankenstein's Monster of interpretation later, when someone wants to twist the meaning for partisan advantage.

The definition itself has five possible avenues of vacancy. They are each pretty clear. The last one is discussed in detail, as noted in the reference directly in the text. It's intended primarily for cognitive illnesses, but it can also include certain kinds of mental or physical illnesses, if they prevent the judge from being able to carry out the duties of the office.

[7] By "malinterpretation," I mean interpretations that intentionally twist the meaning or intent of the Charter language to achieve a different outcome than what was originally intended.

### *Article IV, Section 3.D.2. Length of Service After Mid-Term Appointment*

Article IV, Section 3.D.2(a). Supreme Court

> When an individual is appointed to fill an open seat on the Supreme Court, they only serve the time left in that term. After that, they can't be nominated to the Supreme Court again.

The Supreme Court of the United States is special. Everyone in the U.S. knows it. In fact, everyone in the world knows it. Service on SCOTUS is even rarer than service as an astronaut. Anyone nominated and confirmed to the Supreme Court has reached the absolute top of the profession. Serving any length of time is a high honor, as well as a sobering and awesome responsibility.

The judicial term limits in this Charter are supposed to prevent the Court from becoming rigid and brittle like an eighth-grader's old, dirty gym sock. That constraint is necessary; it's vital. It's one that doesn't exist under our current system, and that lack shows in the fact that the courts lag behind history and the people. A reverent and conservative[8] approach to the law is reasonable and necessary, but the law must also advance with history.

So how do you reconcile those two concerns? For me, and this is what I did here, I deferred in favor of what I believe is best for the Nation. I erred on the side of the term limits. Once a partial term is complete, that's it. If a justice only serves three years, that's unfortunate for them, but the needs of the Nation are greater than their personal ambitions. They can

[8] Here, meaning "cautious about change." I'm not using it as a political ideology in this sense.

certainly decline a nomination if the remainder of a term is too short for their taste, but there's no guarantee that they will be considered for a longer appointment later.[9]

Article IV, Section 3.D.2(b). Circuit, Provincial, District, Court of International Trade, and Immigration Courts

> A judge appointed to fill a vacancy on a Circuit, Provincial, District, the Court of International Trade, or an Immigration Court shall serve only the remainder of the original term.

Again, judicial term limits are the guardrail against entrenchment in the court system. This preserves those limits for the lower courts.

"What about if they want to advance in their careers?" Good question. I'll direct you back to Section 3.A.1, "…a partial term counts as a full term as long as a Judge serves at least eighteen (18) months, and the Judge so serving shall be reckoned as if they had served the full six years concerning eligibility for other Courts."[10]

***Article IV, Section 3.D.3. Temporary Cross-Designation***

> In all courts below the Supreme Court, if a seat is empty and waiting to be filled, it will be temporarily filled by a judge randomly chosen from current or qualified retired judges at the same level of court. The temporary judge's own job, duties, and term limit do not change. They serve only until the confirmed replacement takes office.

[9] There's also no requirement that they be passed over, if they turned down an earlier nomination.
[10] *See* **National Charter of the United States** (unratified), Article IV, Section 3.A.1. Term Limits for Federal Judges.

This is a procedural provision designed to keep the courts moving temporarily when there is a vacancy on the bench. It isn't new in practice, though it wasn't enshrined in the Constitution of 1789.

With the tighter requirements on appointment and confirmation of Federal Judges, this provision shouldn't get leaned on as heavily as it has in recent years.

**Article IV, Section 3.E. Magistrate Judges – Appointment, Term, and Duties**

> Each District, Immigration, Provincial, and Circuit Court may hire, with the approval of the Chief Justice of the Supreme Court, Magistrate Judges to assist in non-trial duties, under procedures established by law.
>
> Magistrate Judges are employees of their respective courts, not constitutional officers. They may issue binding pre-trial rulings and hear procedural motions under the supervision of a Federal Judge, but may not preside over trials.

This subsection creates the Magistrate Judges. Actually, no, that's not quite right. Magistrate Judges have existed since 1968. They were established by Congress in the Federal Magistrates Act of 1968.[11] Congress has acted since then to adjust their duties as jurist assistants to District Court Judges.

[11] *See* **Federal Magistrates Act of 1968,** published in **Volume 82, United States Statutes at Large**, starting on page 1107. This reflects the law as originally enacted by Congress, before any portions were later reorganized or codified into the United States Code.

So, this subsection *doesn't* create Magistrate Judges, but it does make some important changes to the role.

First, Immigration, Provincial, and Circuit Courts can also have Magistrates as assistants under this Charter, which they aren't allowed to do under current law. This isn't to promote bloat in the judiciary. No, the purpose here is to provide courts with legal, administrative, and pre-trial assistance when needed.

Second, under the current system, they are subject to the authority of the Judicial Conference of the United States. Under this Charter, they are direct employees of their respective courts, who hire them.

**Article IV, Section 3.F. Judicial Pay and Compensation**

Judicial compensation shall be based on individual income levels as reported in the most recent decennial census, according to the following percentiles:

- All Federal Judges below the Supreme Court — 92nd percentile;
- Associate Justices of the Supreme Court — 93rd percentile;
- Chief Justice of the Supreme Court — 130% of the Associate Justice rate.

These salaries must be updated after each decennial census.

Like members of Congress,[12] Federal Judges are paid based on individual incomes as reported in the decennial census.

Regardless of the court, all judges except for the justices on the Supreme Court are paid the same amount. Associate Justices get paid more than Federal Judges in the lower courts, but not by a wide margin. The Chief Justice gets paid substantially more, but that is reflective of the extra constitutional and administrative duties that come with that office.

All pay rules in this section are self-executing and not subject to Congressional approval. Pay rules take effect at the beginning of the Judicial Year following the decennial census.

[12] *See* **National Charter of the United States** (unratified), Article II, Section 1.G. Compensation (for Members of Congress).

There's no congressional approval required for the mandated pay increases. The pay is what it is, and no political player can change it. That's by design; it preserves the independence of the Judicial Branch.

As a final shield against creative interpretation, the Charter unambiguously asserts when the decennial pay changes take effect.

## Article IV, Section 3.G. Judicial Removal and Discipline

### *Article IV, Section 3.G.1. Felony*

> Any judge or justice who is convicted of a felony, whether under federal law or the law of any State or Territory, shall be removed from office automatically. This removal shall take effect upon the completion of any appeals or upon reaching the deadline for filing an appeal, whichever is later.

How can the public trust a Judge or Supreme Court Justice who has been found guilty of a felony? Note that this is not a misdemeanor; if you get a speeding ticket, you can stay in the office. But if you commit tax fraud, you're out.

This is also automatic. A Judge loses their job the instant they reach the deadline for appeals or their appeals are fully denied. They get due process, but once it has played out, they're done. Instantly and automatically.

> This provision must be construed as a separate mechanism from impeachment for felonious conduct, which may be pursued concurrently for the same conduct.

This sentence is a defense for the people. Judges are lawyers, by definition. If they don't know how to run out the clock and play the appeals game, who does? This Charter allows for the impeachment of judges, though.[13] If desired, Congress may impeach a judge before the legal system completes its slower process.

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[13] *See* **National Charter of the United States** (unratified), Article IV, Section 3.G.3. Impeachment, *and* Article II, Section 5.F.3. Impeachment Procedures.

***Article IV, Section 3.G.2. Incapacity***

> If a Judge or Justice is suspected of having a physical, cognitive, or mental condition that renders them permanently unable to carry out their duties, a private affidavit, signed by any combination of at least two (2) members of the same court or lawyers who have argued in that court within three (3) months of the date of affidavit, may be submitted to the Federal Licensing Authority (FLA). The affidavit shall remain confidential.

How do you deal with a medically compromised Judge or Justice?

When I originally drafted this clause, I was thinking about cases of dementia, but there are also examples that I could share of mental illness to the point of impairment.[14] There could also be physical illnesses requiring long stretches away from the bench. Regardless of the specific details, sometimes a Judge or Justice can't properly execute their duties but hasn't chosen to resign. This clause is designed for that scenario.

The process begins with the filing of a private affidavit with the Federal Licensing Authority (FLA).[15] That affidavit is private, but it can't be from just anyone. It has to be filed by at least two people concurring that there is evidence of incapacity. Those two individuals must have seen the person in question recently.

[14] I'm choosing not to cite specific examples out of respect for those involved. We know they exist. If you, the reader, feel the need to verify that an occasional Judge exists who develops mental illness to the point that it impairs their ability to function, I'll leave the research of that point in your hands.

[15] You may recall we discussed the FLA in the commentary earlier. To refresh your memory, the FLA is "an independent office within the Judicial Branch to ensure professional and ethical standards for Federal Judges and attorneys."

Even starting the process, this isn't vibes. It isn't, "I don't like that judge over there." There's a process, and it's tied to those people who interact with the judge.

> Upon receipt, the FLA shall initiate two independent medical evaluations. If both evaluations confirm that the judge suffers from physical, cognitive, or mental decline that materially impairs their ability to perform, the FLA shall certify the findings in writing and provide that certification to the Administrative Office of the United States Courts (AOUSC). The AOUSC must relay the certification to the most senior Justice of the Supreme Court not directly involved in the matter. Within twenty-four (24) hours of receiving that certification, the Justice must issue a public notification of removal for medical incapacity.
>
> Automatically, upon issuance of the public notification, the Judge or Justice in question is removed from office.

Once the affidavit gets to the FLA, a medical review is initiated. This is similar (but not identical) to the review used to determine the President's incapacitation.[16] It requires two independent evaluations. Those assessments have to say whether the person in question is so impaired that they can't carry out the duties of their office. If both agree on an impairment of that degree, the FLA certifies those findings in writing to the Administrative Office of the United States Courts (AOUSC).[17]

[16] *Compare to* **National Charter of the United States** (unratified), Article, III, Section 1.B.3. Incapacity.
[17] The AOUSC is a little-known office. It exists "to do administrative and support work for the courts."

Why is the AOUSC involved? See, the next step is to relay that certification to the most senior Justice of the Supreme Court not directly involved in the matter. Now, in most cases, that will be the Chief Justice of the Supreme Court. But what if the person in question *is* the Chief Justice? Someone has to make the determination of which Associate Justice is senior – that's what the AOUSC is for, based on the requirements of this Charter.[18]

Once the certification is in the hands of the senior Justice, that Justice must notify the public. Notice that there's no requirement for the notification to be specific. It only has to say that the reason is medical.

> If the judge or justice in question refuses medical evaluation, that refusal must be made in writing and constitutes their permanent and immediate resignation from office.

Humans are stubborn. We're also hard-wired to trust our own perceptions and intuition. Because of that, we're unreliable witnesses to our own health, especially our mental and cognitive health. It's not far-fetched to believe a judge would refuse to undergo a medical assessment. That's fine; it's their right.[19]

But the American people have rights, too. So, if the individual in question refuses assessment, they must do so in writing. There's a written record. And that written record is also their formal and immediate resignation. Nothing is forced. Rights are respected. But the American people are also protected from the possibility of an incapable jurist.

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[18] *See* **National Charter of the United States** (unratified), Article IV, Section 3.A.2. Term Limits for Supreme Court Justices.
[19] *See* **Ibid.,** Article I, Section 2.B.2(b). Right to Bodily Autonomy.

> The FLA shall retain all related records for ten (10) years before releasing them to the public.

Transparency requirements are still necessary, even in these cases. The full facts come to light after ten years. The delay preserves the dignity of the person in question while still serving the longer-term goal of eventual transparency. This is similar to the transparency requirements for classified information,[20] though the waiting period here is longer.

### *Article IV, Section 3.G.3. Impeachment*

> Federal Judges and Justices may be impeached in the House of Representatives for felonious lawbreaking or for willful violations or attempts at violations of this Charter, and tried on that basis in the Senate.

A Judge or Justice can be impeached for felonious lawbreaking (which is already handled in Article IV, Section 3.G.1, above, but impeachment need not wait for conviction in a court of law), or "for willful violations or attempts at violations of this Charter."[21] If they are impeached and found guilty in the resulting Senate trial, they are immediately removed from office.[22]

This does two things. First, if there is felonious behavior that is sufficiently clear or egregious, and Congress doesn't want to wait for a criminal trial, it can take action to remove the jurist on its own. Second, impeachment by the House and conviction in the

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[20] *Compare to* **National Charter of the United States** (unratified), Article VI, Section 3.C. Sunset Review and Declassification.
[21] *See* **Ibid.,** Article II, Section 5.F.3. Impeachment Procedures**.**
[22] *See* **Ibid.,** Article II, Section 6.D.5. Impeachment Trials.

Senate is the sole means of removal for cases of willful subversion of the constitutional order. For Judges and Justices, there is no higher crime, and this gives Congress the authority to act.

Why do I say there is no higher crime? Surely murder or something is worse, right? Not for a jurist, no. Murder is as awful if they commit it as it would be from anyone else. But the legal system is the wall against which all attacks on constitutional order must break. If one of the defenders is letting assailants in through the sally port, that's betrayal of their core duty. That betrayal strikes at the rights of every person in the United States.

***Article IV, Section 3.G.4. Ethical and Professional Complaint***

This entire clause is way more detailed than I would prefer for the Charter's black letter. Normally, constitutional language establishes principles and leaves details to statute.

Normally.

But what happens to constitutional order when a jurist is able to act unethically?

And what happens to public trust when the judiciary can't be trusted to create and enforce meaningful ethical standards and enforcement mechanisms on their own?

The answer is that the entire judiciary loses legitimacy. And since it is the courts that stand as a bulwark between the people and the government, that loss is corrosive to the entire republican framework.

So for that reason, and that reason alone, this detail is both necessary and proper in constitutional language.

Article IV, Section 3.G.4(a). Judicial Disciplinary Code

> Congress must establish a Judicial Disciplinary Code within one (1) year of the ratification of this Charter. This Code must detail minimum legal expectations of ethical conduct from Federal Judges and Justices. It must address requirements for recusal due to conflicts of interest, rules regarding the legality of accepting personal and professional gifts, reporting requirements for those gifts, and other ethical matters that Congress deems necessary.

Current ethics rules for the Judicial Branch are…problematic. Recent questions about Supreme Court Justices, their ethical requirements, and whether they are bound by the same rules as other Federal Judges reveal, even when read with the most charitable eye, gaps in understanding.

Most Federal Judges are bound by the Code of Conduct for United States Judges. That's great! But there's a huge, battleship-sized gap: it doesn't apply to Justices on the Supreme Court. I'll not diminish the role or importance of lower court judges, but which court has the final word in law? Which court overturns the law *and* establishes precedent? Which court should be the *example* of an institution bound by ethics, rather than the *exception*?

In November of 2023, SCOTUS adopted its own Code of Conduct, but it's self-enforced, with no investigatory body or disciplinary mechanism. In other words, it might as well be written on toilet paper.

This subclause shatters that paradigm. All Judges and Justices are bound by a Judicial Disciplinary Code, written by Congress. It can address any ethical behaviors that Congress

wants it to, but *at a minimum*, it **must** address corruption and the appearance of corruption.

As an absolute minimum.

> Congress may alter the provisions of the Code. No such alteration shall take effect until the end of the second Judicial Year following the adoption of the modifications into law. This provision does not override the prohibition against *ex post facto* laws.

What about updates to the Code? What about the danger of using updates as a pretext to punish sitting Judges or Justices? The subclause anticipates those questions. Congress can update the Code, but the changes can't take effect until a cooling-off period passes *and* the language explicitly states that the subclause doesn't nullify the protections against *ex post facto* laws that appear in Article I.[23]

Article IV, Section 3.G.4(b). Judicial Ethics Complaints

*Article IV, Section 3.G.4(b1). Complaint Submission*

> Complaints of violations of the Judicial Disciplinary Code must be filed with the Federal Licensing Authority (FLA) within six (6) months of the alleged behavior by one or more persons with personal or documentary knowledge of it.
>
> Complaints must be sworn affidavits. Upon submission, the FLA must issue a receipt of the complaint, including the identities of the complainant and the accused, along with

[23] *See* **National Charter of the United States** (unratified), Article I, Section 2.B.2(j). No Ex Post Facto Laws.

citation of the alleged behavior, though particulars of the case shall not be disclosed. This receipt is immediately part of the public record.

Who can file an ethics complaint against a judge? When can they do it? Who do they file that complaint with?

It's great that Congress has to create a Disciplinary Code. But what happens when someone violates it? That's the real test, and that's what will or won't differentiate this effort from the 2023 Code of Conduct the Supreme Court adopted for itself, right?

Here are the answers to those questions. The main points to take away from the black letter are:

1. There is a defined process,
2. There are defined actors,
3. There are elements that must be met to file a complaint,
4. And there are temporal limits.

In other words, this isn't hand-waving. No Jedi Mind Trick to fool the American people into believing there's accountability when there actually is none.

The Federal Licensing Authority shall route the complaint to the appropriate body, depending upon the office held by the defendant. For Judges on the Circuit Courts or Justices of the Supreme Court, the complaint must be routed to the Speaker of the House of Representatives. For all other Federal Judges, the complaint must be routed to the Administrative Offices of the United States Courts. In either case, the complaint must be routed to the correct body within ninety-six (96) hours of receipt by the Federal Licensing Authority.

Once a complaint is filed, mandatory action is required. The Federal Licensing Authority[24] is required to route the complaint to the right body, beginning the review process. They have four days[25] to fulfill that action. That permits long weekends but not lengthy delays.

*Article IV, Section 3.G.4($b_2$). Initial Review of Complaint*

For Circuit Judges and Justices of the Supreme Court, the Speaker of the House of Representatives must direct the Chamber Parliamentarian to empanel at random three Members of the House, not to include themselves or the Vice Speaker, to serve on the Review Panel.

For all other Federal Judges, the Administrative Office of the United States Courts must randomly assign three District Court Judges who are absent of conflicts of interest to serve on the Review Panel.

[24] I promise we'll get to them soon, but for now, remember that this is the body tasked with ensuring competency and ethical compliance from the federal judiciary.
[25] 96 hours / 24 hours in a day = 4 days.

The process continues.

In felony cases, a Grand Jury decides whether to indict the defendant. This is no Grand Jury, but it mirrors the general concept. Someone has to decide if there is enough "there" there to continue to an Ethics Trial. This sets up a Review Panel, which is similar in function to a Grand Jury.

Who serves on the Review Panel depends on the type of judge being scrutinized. Judges from higher courts (the Circuit Courts and Supreme Court) are reviewed by a panel of Members of the House. Those from the lower courts are reviewed by their judicial peers.

You may be wondering why the distinction. That's a reasonable thing to question. The answer is simple. There are so few Circuit judges and Supreme Court justices that it would be extremely difficult to find three random judges who aren't potentially biased. Better to choose elected officials who are accountable to the citizens for those instances.

> The Review Panel must render an opinion, by public agreement of at least two members, whether Probable Cause exists to believe a violation of the Judicial Disciplinary Code has occurred. If that opinion holds that it does exist, the matter shall proceed to an Ethics Trial. The Review Panel must render its opinion within thirty (30) days of receiving the complaint. For the purposes of this timing, receipt of the complaint is measured from the time of the Panel's selection.

And here it is. The Review Panel decides whether there's Probable Cause to believe a violation occurred. It's looser than the threshold for a verdict – only a majority opinion is

required, and only Probable Cause is required as an evidentiary burden. Just like a Grand Jury, this is just to decide if there's enough merit to proceed to trial. Nothing more.

What *is* notable is that the Review Panel doesn't get unlimited time to consider the matter. They have 30 days. That's it. And the start of the clock is explicit, to avoid weird interpretations, whether in good faith or not.

*Article IV, Section 3.G.4($b_3$). Ethics Trials*

> For Circuit Judges and Justices of the Supreme Court, the Review Panel must transmit its findings to the Chamber Parliamentarian of the Senate. If it is found that Probable Cause exists, the Chamber Parliamentarian must, within seven (7) days, select twelve (12) Senators at random, not including the Leader or Deputy Leader of the Senate. These Senators must choose one of their number to serve as the presiding member. The Ethics Trial shall be tried by these twelve Senators.
>
> For all other Federal Judges, the Review Panel must transmit its findings to the Administrative Office of the United States Courts (AOUSC). If it is found that Probable Cause exists, the AOUSC must, within seven (7) days, designate a Federal District Court that is not affiliated with the accused jurist, which shall serve as the venue for the Ethics Trial, which must be conducted in the same manner as any other trial.

This is a lot of words.

Here's what they boil down to:

1. High court judges are tried by 12 Senators.
2. Judges from the lower tiers are tried in district courts.
3. The specific details of which Senators or district courts are involved are left to career public servants, not political actors or other judges.
4. Regardless of the type of judge implicated, the trial details must be announced within 7 days.

The process isn't capricious, but it also isn't easily subject to manipulation.

> Ethics Trials must commence within sixty (60) days of a finding of Probable Cause by the Review Panel.

Are you grasping a theme? No delays. The judge has time to prepare their defense and hire counsel, but not much. Their trial will start promptly. Note that this concerns ethical violations. We don't need DNA evidence, ballistics, fingerprints, and so on. We need to know:

1. What was the ethical rule in question?
2. What was the judge's behavior?
3. Did that behavior violate the ethical rule?

The actor is *always* the judge. The behavior occurred. The only question is whether the behavior broke the rule. Sure, there will be nuance, but the facts in an ethics case are far less in dispute than in a criminal or civil trial. Less time is necessary to prepare for that kind of hearing.

If the Senators or jury unanimously agree that the Preponderance of the Evidence supports a guilty verdict, they shall decide the sanction for the ethics violation. Suitable sanctions may include:

1. Vacature of rulings or orders affected or apparently affected by the unethical behavior, accompanied by formal censure or removal from office;
2. Formal censure alone; or
3. Removal from office.

And here's the part the people will likely care about. How do we determine guilt, and if we find a judge guilty of an ethical violation, what happens to them?

First, the verdict. Just like a normal trial, it has to be a unanimous verdict. The standard of evidence is Preponderance of the Evidence. "More likely than not." That's the same standard as for a civil trial.

Why not Reasonable Doubt?

No one is being deprived of life, liberty, or property by the verdict. The judge may be removed from office (more on that shortly), but there are no criminal penalties associated with a guilty verdict in an Ethics Trial. Given those stakes, it's reasonable to have the lower standard. It permits errors of caution (on behalf of the public) in the sanctioning of a judge.

So what are those sanctions? It can be a slap on the wrist and a statement that the judge behaved badly (censure). Or it can be removal from office. In either case, if the judge's behavior was of a nature that it may have affected a specific ruling or court order issued by

the judge in question, that ruling or order can be vacated. Now, I'd like to point out that the language doesn't mandate vacature. It merely *allows* it, at the discretion of the Senators or jury.

> Any individual having once been censured may not be censured again, but must be removed from office.

Just in case anyone is tempted to issue multiple slaps on the wrist, this forecloses that option. *If* a judge is fortunate enough to escape with censure once, that was their one chance. A subsequent ethics conviction automatically expels them from office.

**Article IV, Section 3.H. Oaths of Office**

> Before taking office in all federal courts, every Judge or Justice must swear or affirm a public oath. No judge may begin any official duties or receive compensation until this oath is taken.

"Why are you so obsessed with oaths?"

That's a fair question, and if your paradigm on oaths of office is to view them like they are used today, that is to say, as ceremonial window dressing, then my insistence on them makes zero sense.

But this Charter makes oaths of office legally binding. If any official breaks their oath, they can be charged with Failure to Uphold Oath of Office, which results in removal from office and a lifetime ban on holding any appointed or elected office at the federal level.[26]

With that in mind, Judges and Justices have to take an oath of office.

***Article IV, Section 3.H.1. Lower Courts***

For all courts below the Supreme Court, the following oath must be given:
"I, [full legal name], solemnly swear (or affirm) that I will support and defend the National Charter and the laws of the United States. I understand that I have no personal right to this power—it comes from the Citizens, through their elected President and Senate.

"I will support and defend this Charter because its purpose is to protect the Rights of all Persons in the United States, as required by this Charter. I will apply the law fairly and equally to every Person. I will serve on the [name of court] with honesty and without favoritism, bias, or corruption.

"I accept my unwaivable duty to recuse myself in any case where a conflict of interest exists or appears to exist. I agree to abide by the requirements of the Judicial Disciplinary Code."

[26] *See* **National Charter of the United States** (unratified), Article IV, Section 7.D. Failure to Uphold Oath of Office.

What are the elements of this oath?

1. **Affirmation of the duty to defend the Charter and other laws.** This *should* be the default expectation for Americans regarding their Judges. This element compels the Judge to swear it. Just like a soldier, the President, or a Member of Congress, a Judge is required to defend the Charter.
2. **Acknowledgment of non-inherent powers.** The Judge affirms that their power is not inherent; its ultimate source is the citizens, delegated through the President and the Senate (by appointment and confirmation). This is a moral choice to uphold the ideal of citizen sovereignty, a pillar of this Charter and the government it establishes.
3. **Acknowledgment of the purpose of the Charter.** The Judge acknowledges the Charter's rights-protective purpose (and, by extension, the government's). By doing so, they have committed themselves to the other pillar of this Charter: that the purpose of government is to secure the rights of the people.
4. **Commitment to neutrality and uncorrupt behavior.** The Judge commits to serve fairly and without corrupt intent. This isn't window dressing; it is an ironclad promise to live up to the ideal of justice for all, regardless of race, creed, color, religion, national origin, or other classification or category.
5. **Agreement to abide by the Judicial Disciplinary Code, including recusal for perceived or actual conflicts of interest.** The Judge commits to following the rules of ethical conduct established by Congress in the Judicial Disciplinary Code. Judges are supposed to be ethical exemplars. This oath makes that commitment explicit.

In short, there is a lot packed into those three brief paragraphs. And all of it is legally binding.

***Article IV, Section 3.H.2. Supreme Court***

> For newly confirmed justices to the Supreme Court, the same oath must be executed as for the lower Courts, appended as follows:
>
> "I accept that the Supreme Court is the highest court in the land, and that serving on it is the most solemn and weighty responsibility in the Judicial Branch. I understand that this position carries a greater burden than service on the lower courts and demands an even deeper commitment to the defense of Natural and Civil Rights over the powers of the State."

On its face, this clause doesn't seem to add much legal weight to the oath required of all Federal Judges. That is, unless you look more deeply. If an ethics tribunal is looking at whether to censure or remove a Justice, it becomes more challenging to justify censure. In the Senate, when confirming the tribunal's findings, the same calculus is in play. Politicians can and will do whatever they think is expedient, but the fact that this is *in the constitutional text* makes it harder for the Senate to ignore. The optics become more perilous for them.

In other words, the oath here doesn't necessarily bind the Justice more tightly in a legal sense. Instead, it makes it more difficult for those who are judging them to give them a pass.

## Article IV, Section 4 – Standing

Imagine that you belonged to an activist organization that sometimes defends groups or individuals that the government doesn't like. Maybe the government even keeps tabs on them. Your organization eventually suspects that the government is surveilling you, but obtaining proof is difficult because the surveillance is likely conducted under the Foreign Intelligence Surveillance Act (FISA). You sue, alleging that your organization is the subject of an unlawful search and seizure. The matter goes back and forth, eventually winding up at the Supreme Court. The Court doesn't consider the merits of your case, though. Instead, they dismiss it because you lack standing; your claim is "too speculative" because you can't show with certainty that your organization's communications had been or would be intercepted.

Does this scenario sound far-fetched? It should.

I regret to inform you that it isn't. The case is *Clapper v. Amnesty International* (2013).[1]

This is an example of how standing doctrine, which is *supposed* to ensure that cases are brought only by people with "skin in the game," is used to sidestep uncomfortable questions. Courts, especially the Supreme Court, frequently fall back on dismissal due to lack of standing. So often, in fact, and with such creative interpretations of standing that the doctrine has ceased to function as intended.

[1] For the full facts and decision, see *Clapper v. Amnesty Int'l USA*, **Volume 568, United States Reports,** opinion begins at page 398 (2013).

Every Person or Class has standing to bring a claim before the courts of the United States alleging a violation of their Rights under this Charter, a breach of a constitutional obligation, or a failure to perform a Civic Duty, so long as the claim presents a real, imminent, or prospective harm that is traceable to a specific act, omission, or policy of the Government or its agents.

This Section shall be interpreted in light of the following principles:

- A harm is **real** if it has already occurred or is ongoing.
- A harm is **imminent** if:
    - The challenged conduct is reasonably foreseeable and likely to occur, *and*
    - The challenged conduct is expected to take place in the immediate or near future.

- A harm is **prospective** if:
    - The challenged conduct is authorized, planned, or reasonably foreseeable under existing law, policy, or practice, *and*
    - The Claimant or Class faces a realistic possibility of being subjected to it, even if the probability is not high. 'Realistic possibility' means the harm could apply to the Claimant or Class under the ordinary operation of the law or policy in question.
- A harm is not rendered **speculative** merely because it is widely shared, systemic in nature, or affects the public at large. A speculative harm is any harm that does not meet the definitions of real, imminent, or prospective harm listed above.

Here are the foundations of a new standing doctrine, carved into constitutional stone. The subsections that follow flesh it out, but this is the heart of it.

*"Every Person or Class has standing…so long as the claim presents a real, imminent, or prospective harm…."*

Do you see it? Do you see the word that rips the courthouse door from its hinges?

'Prospective.'

This ends the abuse of calling a harm 'speculative' as a pretext to avoid ruling on a constitutional issue. Guess what? If the government arrests you and deports you without due process, it's too late to sue for relief after the harm occurs. Stupid, frivolous claims can

still be filtered out if they don't meet the provided definition of prospective harm. But if the Claimant or Class can realistically be harmed, they can seek relief. It doesn't have to be proven that the government has intent. It doesn't have to be shown that harm is likely. As long as the harm *could* occur under the regular operation of a law or policy, it meets the definition of prospective harm.

**Article IV, Section 4.A. Personal Standing**

A Person has personal standing when they:

1. Are directly and individually affected by the challenged action or policy; *or*
2. Face a realistic possibility of being affected if the action or policy continues; *and*
3. Seek relief that would redress or mitigate the harm.

This is a positive statement that guarantees a person has standing if they meet this constitutional test. Why is this important? Because it strips the courts of discretion to deny standing when these conditions are met. Personal Standing is constitutionally guaranteed.

**Article IV, Section 4.B. Civic Standing**

The idea of the citizenry as a fourth and sovereign branch of government is key to this Charter. But how does the citizenry exercise oversight of the government? We've already discussed Periodic Review and Challenged Review. Here we have another: Civic Standing. This is a new category of standing that allows citizens to exercise authority over the

government when necessary. To help you understand Civic Standing and why it matters, I'm going to walk you through it step by step.

Any Citizen may bring a claim in the public interest if :

'Any Citizen' is important. Civic Standing is only available to Citizens. Personal Standing and Institutional Standing (which we will discuss in subsection C)[2] are available to all 'Persons,' but Civic Standing is about the Citizen's ability to exercise their sovereignty.

'…in the public interest' carries some water, here. Personal and Institutional Standing is about defending yourself or a group to which you belong against harm. Civic Standing is about protecting the civic structure of American government as part of the sovereign body known as the Citizens. It equips the citizenry, the sovereign body of the U.S., to oversee the government.

- The claim alleges a violation of a constitutional obligation, a Charter-mandated transparency or process requirement, or a failure to uphold an Official Duty;

The first prong of the test. What's the nature of the harm in question? For Civic Standing to apply, the harm has to be about democratic failure in some way.

- The alleged failure affects the Citizen in their capacity as a co-sovereign; and

[2] *See* **National Charter of the United States** (unratified), Article IV, Section 4.C. Institutional Standing.

This is the second prong of the test. If the harm is the correct *type* of complaint, is the citizen's ability to act impaired? Can they act as a part of the collective body that is superior to the government itself?

- No adequate alternative remedy exists.

The third prong requires that the citizen be without an *adequate* alternative remedy. Notice the word 'adequate' is part of this sentence. It isn't just there for rhetorical flair. The existence of a partial or ineffective remedy doesn't negate Civic Standing. On the other hand, if there really is a way to solve the problem without resorting to the courts, Civic Standing doesn't apply.

The relief sought must be within the court's power to grant.

This should be common sense. You can't ask the court to declare war or suspend the Charter. Those remedies would be outside the scope of their power. On the other hand, the request could be to overturn a law or bar a policy that deprives the citizenry of the ability to act in its oversight role over government. That request is something that's within the court's power.

The widespread or collective nature of the harm does not preclude standing.

This is another bar on judicial (mis)interpretation of what constitutes standing. Almost by definition, actions or policies that could be challenged via Civic Standing are broad in scope. That diffuse nature doesn't make it suddenly impossible to sue, unlike our current system, where it often is.

So there we have it: Civic Standing. It's a clearly defined form of legal standing that's logically consistent with the idea of collective Citizen Sovereignty. There are established standards for what Civic Standing can do and when it can be done. Still, the citizenry of the United States is sovereign. And they may bring the government that serves them to heel through the courts, if necessary.

***Article IV, Section 4.B.1. Mandatory Preliminary Review***

> Any claim brought that depends upon Civic Standing shall receive a preliminary review by the court within ten (10) days of filing. The reviewing judge shall issue a ruling determining whether the claim may proceed based on the requirements of this Section. This ruling shall be public and subject to appeal only on procedural grounds.

Civic Standing could be a means to blow open the floodgates of litigation. In fact, I suspect that will be the case, especially in the beginning. This clause is intended to be one-half of a hedge to protect the courts from frivolous suits. Every case gets a procedural review within ten days of filing, and the spurious ones get tossed. It's automatic; counsel for the defense doesn't even have to request it.

"Even this preliminary review looks like an enormous burden on the courts." That's fair. But remember, this is precisely the kind of matter that Magistrate Judges are hired to handle. This Charter provides the Judicial Branch with the tools to manage this. That is, if it chooses to use those tools.

***Article IV, Section 4.B.2. Penalty for Abuse***

> Whenever at least two claims relying on Civic Standing from the same litigant or litigants are rejected in the Mandatory Preliminary Review within any two-year period, the litigant(s) shall be subject to a mandatory civil penalty. That penalty shall equal one-half of:
>
> - Gross income in the case of Persons, or
> - Gross revenue in the case of Institutions,
>
> As received or realized the previous year, regardless of source.
>
> This penalty is attachable and, if not otherwise collectible by the court, shall be recovered through attachment of present or future assets, including income, until paid in full.

Here's the other half of that hedge against frivolous suits. Anyone can file a suit relying on Civic Standing, anytime. But if two (or more) cases from the same litigant are dismissed during the mandatory preliminary review within two years? Yikes. They incur a severe penalty.

Notice this only applies to cases dismissed during preliminary review. Cases dismissed later, or cases that are lost on the merits, don't count toward the "two within two" rule. A litigant can lose a case in the usual ways that happen in our adversarial system. That's the system working as designed. This penalty is for frivolous or unserious suits brought under the pretext of Civic Standing.

Well, okay, that seems reasonable. But how do we get to an agreed-upon number for income or revenue?

A panel of three independent auditors shall determine income utilizing Generally Accepted Accounting Practices (GAAP).

Different stakeholders shall appoint the panel's three members:

- One appointed by the Court;
- One appointed by the claimant; *and*
- One appointed by the respondent. If the respondent is a government body, the third auditor shall be appointed by the Director of the Congressional Budget Office.

If no consensus can be reached between the three panelists, an average of their estimates shall be used.

That's how. Three panelists, chosen by the three stakeholders. If they can't agree, we use the average. Clean and watertight.

Penalties under this provision are enforceable as final civil judgments. They shall not be considered excessive, having been expressly defined and authorized within this Charter as necessary to safeguard the integrity of public-interest litigation.

Remember back in Article I, there was a provision about cruel and unusual punishments?[3] This is an explicit carve-out. Why? What makes this so special? Civic Standing is designed to uphold our Republic's democratic processes. Abuse of that mechanism is an attack on the Republic, not with guns and bombs, but with procedure. The response is proportional.

[3] **National Charter of the United States** (unratified), Article I, Section 2.B.2(x). Protection from Excessive Bail and Cruel or Unusual Punishments: "Excessive bail or fines are forbidden."

Note also that the penalty is a percentage of income or revenue, rather than a fixed sum. That's an intentional design choice. It makes the punitive nature real for wealthy litigants as it is for poor ones.

**Article IV, Section 4.C. Institutional Standing**

An organization has standing to bring a claim on behalf of its members if:

1. At least one member has standing under this Section;
2. The claim is germane to the organization's mission and purpose; *and*
3. The relief requested does not require individual participation of members beyond what is necessary to establish the claim.

In Article I, we discussed associations and their lack of constitutional rights of their own.[4] We've covered a lot of ground since then. If you're fuzzy on the details, that's understandable. Feel free to take a minute to glance back at that section.

If an association has no rights of its own, can it have standing in court? Well, yes. There are two ways.

First, the association could sue as outlined in Article I, relying on the *legal fiction* of Personal Standing.

This subsection grants standing in another way. Without re-stating it word for word, the language here basically allows an association to represent its constituent members as a

[4] *See* **National Charter of the United States** (unratified), Article I, Section 2.B.1(b). Associations, *and the associated commentary.*

stand-in litigant, as long as at least one of those members would have standing in their own right.

Seems strange? It isn't really. We do this all the time with classes. Class action suits allow the "class" to act as a stand-in for the individual members of that class. This is very similar. It's really the same legal mechanism.

**Article IV, Section 4.D Defensive Standing**

> Only a Person or institution directly responsible for enforcing a law, regulation, or policy, or serving as counsel for such a party, may defend its constitutionality. This provision must not be interpreted as outlawing *amicus curiae* briefs filed on behalf of the law's constitutionality, but those briefs cannot stand in as *de facto* counsel or representation.

This likely seems odd. Why limit who can defend a law?

Sometimes, however, the natural defender of a law or policy agrees that it is unconstitutional, so they refuse to defend it. An example of this was the Obama Administration's refusal to defend the Defense of Marriage Act (DOMA) in *United States v. Windsor* (2013).[5] In that example, the House of Representatives stepped in to uphold the law. It was an unusual technical procedure. The court allowed it while noting the unusual posture.

[5] See *United States v. Windsor*, **Volume 570, United States Reports,** opinion begins at page 744 (2013).

In a different case, but one with similar (though not identical) circumstances, the judgment on standing went the other way. In *Hollingsworth v. Perry* (2010),[6] the State of California declined to defend Proposition 8 in court. That being the case, Proposition 8's sponsors stepped in to defend the amendment to California's constitution. The Supreme Court ruled that the sponsors lacked standing in the case.

In both of these cases, the government refused to defend the matter in court, believing the law in question to be unconstitutional. In both cases, the creators of the law stepped into the breach. However, the Court ruled in opposite ways on the two cases. There are technical distinctions that make the split decisions understandable. However, the differing rulings highlight confusion over who is allowed to defend a law in court.

The Charter language here is clear. If someone is neither bound by nor responsible for enforcing a given law or policy, they have no Defensive Standing (unless acting as counsel for someone who is).

"Friend of the Court" briefs are still allowed, but they can't be used as a stand-in for counsel.

If the government or the defendant won't back it, no one else gets to do so.

[6] See *Hollingsworth v. Perry,* **Volume 558 United States Reports,** opinion begins at page 183 (2010).

## Article IV, Section 5 - Interpretation

> The State exists to secure the Rights of the People. The Courts do not exist for their own sake, nor are they permitted to override those Rights.

At first glance, this might sound like rhetoric or high-minded philosophy. But ask yourself: Why is it the opening clause on judicial interpretation? By now, I hope it's clear that every word in the Charter is there for a reason. This is no exception.

Courts will use this section as a reference. It's here to help judges understand *how* to apply the law, in general, and this Charter, in particular. This clause, the very first words of the entire section on interpretation, provides the underlying philosophy to use in that interpretation.

It's the judiciary's job to make sure that the power of the state is only used to secure rights. The courts aren't there to bolster the strength and power of the state.

There's nothing here about administrative convenience.

There's nothing here about state interests.

There's nothing here about cost-saving measures.

It's about government power being applied equally. It's about doing it solely in the interest of securing the rights of the American people. Full stop.

## Article IV, Section 5.A. Interpretational Precedence

All laws aren't equal in authority. They can't be. Laws will come into conflict with one another when they are applied in real-life situations. It's unavoidable. Some laws must have greater authority than others. That reality is reflected in the Constitution of 1789's declaration of supremacy.[1] There's a vast array of statutory law that builds on that hierarchy.

But there are weaknesses. It hasn't always been clear which laws supersede others, outside of the bounds of the Supremacy Clause. So the courts have to create doctrines, which are sometimes chaotic.

An example is the last-in-time rule. This pits treaties against statutes. When the United States signs a treaty, our partners in that treaty reasonably expect us to honor our international obligations. But the Constitution of 1789 isn't clear about precedence, so the courts had to manufacture a doctrine. That doctrine says that the last law on the matter, be it the treaty or a statute, is the controlling law. We could sign a treaty, Congress could subsequently enact a conflicting law, and the treaty would be broken. If, on the other hand, the treaty was signed and consented to *after* Congress passed the law, the treaty is the binding law. While it's easy enough to understand how the Court arrived at that doctrine, it's obviously chaotic, at best. At worst, it could destabilize our international standing.[2]

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[1] *See* **Constitution of 1789,** Article VI, Clause 2 (the "Supremacy Clause").

[2] This sounds bizarre, but it is real. See *Whitney v. Robertson*, **Volume 124 United States Reports,** opinion begins at page 190 (1888), which established the national precedent for the "last in time" rule. It was solving a real problem at the time, but its subsequent application has proven problematic.

This explicit hierarchy is designed to clear up any fuzziness in how different laws relate to each other.

> In all judicial proceedings, the following sources of law shall apply, in this order of authority:

So, here it is. Here's an unambiguous statement that establishes a precedence. It sets up the numbered list that follows and makes it clear which legal authorities fall where in relation to one another.

> 1. This Charter, including the Rights enumerated in Article I, prevails over all other sources in the event of conflict.

This is similar to the Supremacy Clause in the Constitution of 1789. It's notable that the wording highlights that it includes all of the rights enumerated in Article I.[3] That would be the case without the inclusive clause. By highlighting it, this precludes any bad-faith or creative reading that would try to argue that the enumerated rights are somehow not as authoritative as the rest of the Charter.

> 2. Case law interpreting this Charter, the Articles of Confederation, or the Constitution of 1789, but only to the extent it is consistent with this Charter.

"What about case law? Do previous precedents hold?" That's a very good question. Continuity is extremely important to the Republic. Vital. At the same time, some

[3] *See* **National Charter of the United States** (unratified), Article I, Section 2.B.2. Civil Rights *and* Article I, Section 2.B.3 Civic Rights of Citizens.

precedents, like *Citizens United,*[4] are no longer relevant under this Charter. This point specifies that constitutional case law can hold, as long as it doesn't contradict this Charter's text or principles.

3. Treaties duly ratified by the United States.
4. Federal Statutes enacted under the authority of this Charter.

This is a slight departure from the Constitution of 1789. The Supremacy Clause says, "This Constitution, and the Laws of the United States…and all Treaties made…shall be the supreme Law of the Land…." That wording appears to place the Constitution of 1789, federal statutes, and Senate-ratified treaties on equal footing. That creates an obvious problem: it suggests that a treaty or federal statute could override the Constitution itself. The courts have interpreted it differently.[5]

Here, the Charter has established a 1-2-3-4 framework. We noted the Charter was #1 and that case law is #2. This then states Senate ratified treaties are #3 (more on that in a second), and federal statutes are #4.

But why are Treaties higher than laws? It's about the United States being trusted to keep its word. There are certainly circumstances where the U.S. *can't* uphold the Charter and a treaty obligation at the same time. It happens. But outside of those circumstances, we made

[4] See *Citizens United v. FEC*, **Volume 558, United States Reports,** opinion begins at page 310 (2010). Also refer to the commentary for **National Charter of the United States** (unratified), Article I, Section 2.A.1. Personhood and Article I, Section 2.B.1(b). Associations.
[5] It was a question that arose as early as 1885, but was clarified most clearly in *Geofroy v. Riggs*, **Volume 133, United States Reports,** opinion beginning at page 258, special attention at page 267 (1890). "The treaty power, as expressed in the Constitution, is in terms unlimited except by those restraints which are found in that instrument against the action of the government or of its departments, and those arising from the nature of the government itself and of that of the states. It would not be contended that it extends so far as to authorize what the Constitution forbids, or a change in the character of the government, or in that of one of the states, or a cession of any portion of the territory of the latter, without its consent."

a *promise* to one or more other nations. Are we as good as our word, or not? And if we're not, why would any nation ever trust us again?

5. Case law interpreting such statutes.

This should be self-explanatory – so naturally, I'll explain it anyway. Just like case law interpreting this Charter, the Articles of Confederation, and the Constitution of 1789, common law that interprets our treaties and statutes *is law* in and of itself. That's how precedent works. This just shows where it falls in the hierarchy.

6. Regulations issued pursuant to a statutory mandate.

Some agencies issue regulations because Congress has directed them to do so in a federal statute. This numbered point is about those regulations. Think of OSHA workplace safety regulations or EPA regulations.

7. Executive Orders.

The President issues orders. That's how they direct the agencies and departments of the Executive Branch to do things. That's perfectly valid. But Executive Orders carry a very low level of authority in the hierarchy. In strict point of fact, they aren't allowed to establish law at all.[6]

[6] *See* **National Charter of the United States** (unratified), Article III, Section 2.A.4. Power to Issue Executive Orders.

8. Regulations issued solely under the authority of Executive Order or other Executive instrument.

At the very bottom of the hierarchy, there are those regulations that aren't issued at the direction of Congress, but simply by executive agencies trying to fulfill their missions. These regulations are valid, but they are the lowest authority in the hierarchy.

State law exists outside of this hierarchy. When state and federal law are in conflict, federal law prevails.

And, what about the states? All federal laws are superior in authority to all state laws. This is worded differently than in the Constitution of 1789, but it enforces the same principle.

**Article IV, Section 5.B. Interpretational Rubric**

***Article IV, Section 5.B.1 Rights Presumption***

Courts must interpret this Charter with a presumption in favor of Rights.

Boom! This is unheard of. The very first words on interpretation lay down the law: rights first. This is tiny and huge.

I say it's tiny because it's such a simple thing to say.

It's huge because it overturns so many of the interpretational tests in current constitutional law.

- When a law is challenged, the challenger doesn't have to prove unconstitutionality; the government has to confirm that it doesn't violate rights.

- Courts can't reflexively defer to the Executive or Legislative branches the way they traditionally have. Instead, they are required to prioritize individual rights and demand that the government provide justification grounded in the Charter.
- There's no longer any justification for balancing tests that weigh rights against "government interests." Rights come first. That principle is the State's only legitimate interest.[7]

***Article IV, Section 5.B.2. Conflicting Rights***

When conflict between Rights creates a controversy, the Courts must try to find a resolution that retains the Rights of all parties. Only when that proves impossible, the Court may restrict the Rights of one or more parties, provided that any such restriction is narrowly tailored and recognizes that the State has no legitimate interest beyond securing the Rights of the People. The restriction must:

- Serves an otherwise Rights-protective purpose, and
- Be executed using the least restrictive means available, and
- Be ordered with a defined and limited duration, if possible.

Sometimes two or more separate rights conflict.

Joe and Alicia both have a right to the free exercise of their religions. Joe's religion requires him to serve green beans any time he serves food to another person. Alicia's religion

[7] *Consider* **National Charter of the United States** (unratified), Article IV, Section 5.B.2. Conflicting Rights: "…the Court…recognizes that the State has no legitimate interest beyond securing the Rights of the People."

forbids the consumption of green beans or even their presence anywhere her food is prepared. But Joe's restaurant also has a killer meatloaf, and Alicia wants to try it.

Alicia sues Joe, demanding he stop serving or storing green beans at his restaurant because it conflicts with the free exercise of her religion. He, of course, refuses because of his own religious obligations.

The court would first see whether any reasonable ruling can be made that respects both Joe's and Alicia's right to free exercise of religion. Lo, and behold, there is! Alicia has no constitutional right to access Joe's meatloaf, so she can simply avoid Joe's restaurant. The mere fact that she *wants* his meatloaf isn't a reason to infringe on Joe's rights.

But what if Joe isn't running a restaurant? What if he is the cook on the USS Constitution III, a naval vessel, and Alicia is a sailor aboard her? Now it gets trickier. There's only one galley, and no easy way to separate them. In this case, the court rules that Joe may store and serve canned green beans in a separate compartment next to the galley, as long as Alicia's meals remain uncontaminated. Joe still has to serve Alicia – a real infringement of his rights. However, he is free to serve everyone else aboard the required green beans, and Alicia's rights are respected. He's also only required to maintain the separate arrangement when Alicia is on board, so if she takes shore leave or is transferred off the ship, he is free of the restriction.

This is an obviously ridiculous example, but it illustrates the point. In the restaurant version of the example, Alicia might not be happy, but everyone's rights were preserved. In the shipboard example, Alicia's rights are maintained, and Joe's are infringed, but only to

the minimum extent, only for a finite and defined duration, and only to preserve Alicia's rights. Notice that this solution was the *least* restrictive. If Alicia had been required to tolerate the green beans, she would have had to do so with every single meal. Joe only had to accommodate Alicia's presence, not abandon his faith entirely.

It's worth noting that the Navy probably finds this arrangement a pain, but its convenience doesn't matter. The Navy (as part of the government) has no interests of its own, at least in this extremely oversimplified example. In real life, the Navy is charged with the life and bodily autonomy of every person on board, as well as the entire Nation, so those would have to be considered, as well. But let's keep the example crisp, ok?

> In these cases, the burden shall rest on the government or claimant to justify any legal classification, restriction, or distinction. That justification must be:
>
> - Strictly necessary to prevent infringement of the Rights of one or more other Persons, and
> - Based on real need, not speculation, ideology, or administrative ease, and
> - Based on verifiable evidence, not mere assertion, and
> - Grounded in the principles of this Charter, and
> - Free from arbitrariness, political motivation, or discriminatory effect.

If a party requests a remedy that would infringe someone else's rights, they have to justify it. If the suit is instead seeking relief from infringement, the burden shifts to the government to defend its action. And that justification can't be a simple hand wave. There are five elements that *all* must be met (that's why the first four end with "and").

Traditionally, courts have used different levels of "scrutiny" to decide when and how rights can be infringed. The entirety of this Charter rejects that notion. These five requirements demand not only necessity and evidence, but moral grounding in the Charter's principles of liberty and equality.

This clause is designed to preserve rights as much as possible, even when they're in conflict.

***Article IV, Section 5.B.3. Structural Harm***

> Courts must consider structural harm when evaluating alleged violations of Rights. Animus need not be shown—only a consistent pattern of disproportionate harm to an identifiable group.

Institutional racism exists. So does institutional sexism. And so does institutional religious presumption. If you disagree with that notion (some do), you're living divorced from reality, and nothing I say here will sway you. For the rest of us, this passage instructs courts to consider those things. Nobody has to prove that a law is *intended* to discriminate, only that it does.

## Article IV, Section 6 – Administrative Departments of the Judiciary

All three traditional branches of government have agencies or departments within them. We tend to think of ones like the Department of State when considering government agencies. But Congress has agencies like the Government Accountability Office and the

Congressional Budget Office, too. In fact, if you recall, in Article II, this Charter mandates and reorganizes them.[1]

Just like the Executive and Legislative Branches, the Judicial Branch has agencies under its control. An example is the often overlooked Administrative Office of the United States Courts (AOUSC). This Section of the Charter addresses those agencies. It speaks to how they've changed and to the new ones the Charter requires, including their scope and functions.

[1] *See* **National Charter of the United States** (unratified), Article II, Section 3 – Legislative Infrastructure.

**Article IV, Section 6.A. Administrative Office of the United States Courts (AOUSC)**

> There shall be an Administrative Office of the United States Courts (AOUSC) to do administrative and support work for the courts. The Chief Justice of the Supreme Court appoints the Director and Deputy Director. Either may be removed by the Chief Justice, but only with at least four Associate Justices assenting.
>
> The AOUSC will provide administrative support to the federal courts as provided by law.

This office already exists. Its duties and scope are within the framework listed here. This subsection really only establishes two things that aren't currently in place. First, it constitutionalizes the office, because it was established in 1939 by statute.[2] Second, it establishes a formal means of removal for the Director and Deputy Director, including requiring assent from four other Justices to shield the official from mercurial firing.

But what's the big deal about his office, anyway? Can't this just be part of the Executive branch?

It could be. Or it could be part of the legislative infrastructure. Neither is a good fit for two reasons.

[2] **Act of Aug. 7, 1939**, *"An Act to provide for the administration of the United States courts, and for other purposes,"* published in **Volume 53, United States Statutes at Large,** beginning at page 1223. This reflects the law as originally enacted by Congress, before any portions were later reorganized or codified into the United States Code.

The first is practical. The judiciary is what this office supports. Judicial members understand what support they need. Doesn't it make sense for the judiciary to control the office?

The other reason is philosophical. Why should Congress or the Executive Branch have control of the administration of the Judicial Branch? The clear answer, rooted firmly in our inherited republican values, is that they shouldn't. Keeping this office within the Judicial Branch supports the separation of powers.

Imagine a hostile President who controls the office that decides which judges on a given bench will hear a case on executive power. Or what about Congress controlling the office that assists the Chief Justice in preparing the judiciary's budget? Those would be obvious conflicts of interest and clear breaches of the separation of powers.

**Article IV, Section 6.B. Federal Licensing Authority (FLA)**

There shall be a Federal Licensing Authority within the Judicial Branch responsible for maintaining professional and ethical standards among Federal Judges and attorneys. The Authority will be governed by a board composed of Federal Judges and public representatives. There shall be nine members, including the Presiding Member, who shall maintain order in meetings. The Presiding Member only votes to break a tie. The Governing Board shall be composed as follows:

- The Presiding Member shall always be the second most senior Federal Judge on the Circuit Courts, as determined by total tenure in the Federal Judiciary, with age serving as the tie-breaker, if necessary.

- There shall be four members who are Federal Judges of either the Provincial or Circuit Courts. Each shall be selected at random by the Administrative Office of the United States Courts (AOUSC) and shall serve for one year.
- There shall be four members who are attorneys practicing or teaching law at the federal level. Each serves a staggered four-year term with one term expiring each year.
- Any sitting Federal Judge may recommend an attorney or law professor for nomination, provided that the recommendation is made in writing and endorsed by the individual in question.
- The Chief Justice shall nominate each attorney or professorial appointee, and a quorum of the Supreme Court shall confirm the nominee.

We've mentioned the Federal Licensing Authority (FLA) a few times already. We spoke briefly about them when we discussed the Circuit Court Citizen Commissions[3] and in more depth in our conversations regarding Judicial Removal and Discipline.[4] Here, the Charter officially establishes this group and outlines their governing structure: who serves and for how long.

[3] *See* **National Charter of the United States** (unratified), Article IV, Section 2.B.5(a). Circuit Court Citizen Commissions.
[4] *See* **National Charter of the United States** (unratified)**,**

Article IV, Section 3.G. Judicial Removal and Discipline.

The regularly voting members (*i.e.,* all the members except for the Presiding Member) are evenly split between Judges from the Judicial Branch and public members drawn from the practicing or academic legal community. In other words, attorneys, but not judges. Those who practice before the federal courts have a voice in enforcing the standards that govern both judges and attorneys.

So why is the FLA presided over by the *second* most senior circuit court judge? That seems an odd and arbitrary choice. It's because in the judiciary, seniority carries additional weight and responsibility. The choice is largely symbolic, but it points to someone highly tenured, but not at the absolute top of the heap.

The Federal Licensing Authority shall:

- License and oversee professional standards for Federal Judges and attorneys.
- Review complaints regarding professional misconduct.
- Refer substantiated complaints for disciplinary action as provided by this Charter.

"Gary, you've added a whole body to the Judiciary. What does it do?" Well, here it is.

First, and I'll guess you deduced this from the name, it issues licenses to practice law at the federal level (as opposed to state-level licenses). It also oversees the application of the Judicial Disciplinary Code.[5]

[5] *See* **Ibid.,** Article IV, Section 3.G.4(a). Judicial Disciplinary Code.

It's also where complaints go.[6] If someone has a grievance against a judge, they file it with the FLA. The Authority then reviews the claim and refers it if the FLA finds it substantiated.

> The Authority shall not interfere with ongoing judicial proceedings or exercise judicial functions.

This final passage ties up the loose ends. The FLA can't interfere in judicial business, and it can't hold trials or hearings. It is a support agency of the Judicial Branch, not a court.

**Article IV, Section 6.C. Judicial Nomination Board (JNB)**

> There shall be a Judicial Nomination Board to identify and approve qualified candidates for appointment to the Federal Courts of the United States. The Board serves as an independent body to ensure that judicial nominations are based on merit, integrity, and constitutional eligibility, free from political influence.

Like the FLA, we've already encountered the Judicial Nomination Board in the commentary. We briefly touched on them when we discussed the Circuit Court Citizens Commissions[7] and saw the product of their work when we talked about the Appointment and Confirmation[8] of Federal Judges. Here, the Charter establishes the JNB and states its purpose.

> The Board shall consist of nine (9) members, as follows:

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[6] *See* **Ibid.,** Article IV, Section 3.G.4(b1). Complaint Submission.
[7] *See* **National Charter of the United States** (unratified), Article IV, Section 2.B.5(a). Circuit Court Citizen Commissions
[8] *See* **Ibid.,** Article IV, Section 3.C.1. Nomination.

- Three retired Federal Judges, appointed by the three most senior Associate Justices of the Supreme Court at the time of selection. A majority vote of the sitting judges of the Circuit Courts of Appeal must approve these appointments. If a seat is vacated mid-term, the Chief Justice shall appoint a replacement to serve the remainder of the term.
- Three licensed federal attorneys, selected by the American Bar Association or another similar national institution as designated by statute. If no institution is designated, the Chief Justice shall choose the nominees, subject to the same ratification scheme as for the former judges.
- Three public representative Citizens, with no legal or judicial affiliation, shall be selected via civic lottery.

Membership is compulsory for all selected individuals. Members shall serve equal terms, and any mid-term replacement shall serve only the remainder of the original term. A new Board shall be selected in each even-numbered year that does not coincide with a Presidential election year.

This passage sets up the structure of the JNB. It equally represents the Judiciary, the broader legal profession, and the people. They all serve equal-length terms, with a new Board seated in the same years as the Congressional midterms. That might seem like a politically charged time to swap out a constitutional board, but it's not. That's because the

appointments are confined entirely to the Judicial Branch. The political branches, especially the Legislative, are uninvolved.

> The Judicial Nomination Board shall maintain and regularly update lists of eligible candidates for appointment to each level of the federal judiciary. Each list shall have at least three (3) potential candidates and as many as twenty (20). These lists shall be transmitted to the President as required under this Charter. The Board may develop rules and criteria, consistent with this Charter, to guide its evaluation of candidates.

Currently, the entire burden for selecting and vetting nominees for the federal bench rests, in theory, on the President. In reality, the President's political staff does most of the selection and vetting, presenting only a short list to them for the actual selection.

That's reasonable, in a sense. I don't want my President spending hours or days poring over dossiers and judicial records. I want them overseeing the Cabinet, acting as the Head of State, and serving as Commander-in-Chief.

Still, it would be nice if we, the people, could know *who* is making the selections and vetting the candidates, right? That's what the JNB does. And guess what? It draws from judges, attorneys, and regular people to achieve that purpose.

> Board members shall be compensated at the salary of a Federal Judge, prorated according to the number of days the Board is active in a given year.

Membership is a mandatory civic duty, but JNB service is compensated differently than most civic duties: members receive the same daily pay rate as a Federal Judge.[9]

I'm sure you understand why we don't want the President involved in the vetting decision, and why relying on their political staff is a weaker choice than this scheme. But is there anything else this structure accomplishes?

Yes. By taking the initial list generation away from the political class, there is less chance of ideologically-charged nominees (there's no way to completely eliminate that risk). It also ensures that there is always a ready-and-waiting list of candidates for any given bench, in case a nomination is needed quickly.

**Article IV, Section 6.D. Judicial Enforcement Service (JES)**

"John Marshall has made his decision; now let him enforce it!" Andrew Jackson probably never said that.[10] But he could have —and, in fact, without presidential compliance, a court order that rules against the Executive Branch is otherwise unenforceable.

"What? Bullshit, Gary! That doesn't make any sense. The courts are supposed to be a check on the other two branches." Well, it's most certainly B.S. It's also 100% true.

Under the Constitution of 1789, when the courts issue a contempt order, for example, they rely on federal law enforcement under the Executive Branch to enforce it. (Ironically, it is

[9] Judges don't get paid by the day, of course. I mean only that board members receive a prorated salary based on the number of days of their active service.

[10] In *Worcester v. Georgia,* **Volume 31, United States Reports,** opinion beginning at page 515 (1832), in a finding authored by Chief Justice John Marshall, the court ruled in a manner contrary to the policy of President Jackson. There's no contemporary record of Jackson ever saying these words, but the underlying truth remains solid: Jackson failed to take any action on the finding that states' rights didn't supersede a treaty with the Cherokee. Jackson disagreed and sided with the State of Georgia. The quote, for those who are curious, originated with a Jackson critic, Horace Greeley, a newspaper editor, years later.

the Federal Marshals who would do so.) Exactly how likely do you think that it would be for a President to order their own arrest?

The U.S. Government has three formal branches: the Executive, Legislative, and Judicial. The Executive has lots of law enforcement under its control – the FBI, ATF, Marshals, Secret Service, and so on.

A lot of people don't realize it, but the Legislative Branch also has its own law enforcement agency: the Capitol Police.[11] The Capitol Police secure the Capitol campus, performing security and law enforcement functions on those grounds, and they report to Congress.[12]

Someone will likely argue that the Judiciary shouldn't have a law enforcement arm. OK, but why not? Congress has one. Is it because the Judiciary shouldn't act as enforcer and judge? That's fair. But, as detailed in the following clauses, the JES doesn't have investigative power. It generally has arrest authority only *after* a court issues an order authorizing it. The sole exception is in emergencies. Even then, the JES immediately remands anyone in custody to the Executive Branch.

> A government that guarantees Rights must possess the ability to enforce them. There shall be a Judicial Enforcement Service (JES) to enable the courts of the United States to carry out their lawful orders and protect the Rights of the People without relying on the Executive Branch. This Service is necessary to preserve the independence of the Judiciary, ensure access to justice, and uphold the constitutional limits on

[11] *See* **National Charter of the United States** (unratified), Article II, Section 3.B.2(b). Capitol Police.
[12] While this Charter streamlines the organization surrounding the Capitol Police, that agency predates this Charter. At the time of this writing, it exists by statute.

> government power. It belongs solely to the Judicial Branch. Congress shall have oversight authority via any committee with jurisdiction over the Judiciary. The Executive Branch has no authority over the JES whatsoever.

This dense paragraph lays down the law (I mean, it's constitutional language, so yeah, but also in the metaphorical sense). There **shall** be a JES. It **is** necessary. The Executive Branch has **no** authority over it.

***Article IV, Section 6.D.1. Leadership and Oversight***

Article IV, Section 6.D.1(a). Director

> The Judicial Enforcement Service (JES) is led by a Director of Judicial Enforcement, who is appointed by the Chief Justice of the Supreme Court and confirmed by the Senate within sixty (60) days of nomination. The Director may be removed by the Chief Justice only for cause, which must be stated in writing. The Director may be impeached in the same manner as other senior federal officials.

The Director of the Judicial Enforcement Service is an appointed official of the U.S. Government, and is subject to the same Senate confirmation process as a Federal Judge or a member of the President's Cabinet. Why? Because they may be called on to ensure other government officials obey court orders, or even called on to enforce an arrest order against those officials for contempt. That's a big deal, and it should be treated accordingly.

The Director can be fired by the Chief Justice, but not on a whim. And if they are fired, the reason must be documented. Under the transparency requirements of this Charter, that

means those reasons must be published.[13] And as a final check on their power, the Director can be impeached by Congress.[14]

Art. IV.6.D.1(b). Inspector General

> There shall also be an Inspector General, appointed by the President and confirmed by the Senate, who may only be removed for cause. They are subject to impeachment. The Inspector General will have full subpoena power to investigate any allegations of misconduct perpetrated by JES officers. The Inspector General serves a single, non-renewable term of six years.

Here's where the President gets a tiny bit of say. Not in the day-to-day operations; that would completely defeat the purpose of the JES. But they *can* appoint the Inspector General.

Once appointed and confirmed, though, the Inspector General is their own person. They can only be fired for cause. What's more, they can subpoena whomever they need to investigate misconduct by JES officers.

The six-year term is long enough for continuity. The ban on reappointment prevents the office from becoming a private little kingdom.

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[13] *See* **National Charter of the United States** (unratified), Article VI, Section 3.A. General Transparency Requirement.

[14] As a reminder, impeachment *is* an inherently political tool. All the same, it can only be brought for "behavior rising to the level of felonious lawbreaking or for willful violations or attempts at violations of this Charter." (*See* **Ibid.,** Article II, Section 5.F.3. Impeachment Procedures.)

***Article IV, Section 6.D.2. Structure***

> The JES shall be composed of three divisions, each led by a Division Commander. The Director appoints Division Commanders to renewable four-year terms. Each Division Commander delegates authority to officers as necessary to ensure order and discipline among the division's Deputies. Officers are promoted from the ranks of the Deputies.

This passage establishes the structure of the Judicial Enforcement Service and the authority of its command structure. It also ensures that the immediate supervisors are drawn from the ranks, while middle managers (the Division Commanders) are appointed.

To make the breakdown crystal clear: a Division Commander is roughly equivalent to a Deputy Chief or Captain in an urban force. The Officers are the Lieutenants and Sergeants. Deputies are the equivalent of rank-and-file cops.

Article IV, Section 6.D.2(a). Security Division

> There shall be a Security Division, responsible for transporting detained individuals to and from court, maintaining courtroom and courthouse safety, and ensuring physical protection for court officers, judges, witnesses, and others under judicial protection.

This establishes the Security Division and makes it responsible for ensuring the safety of facilities and the people involved, including government actors, observers, witnesses, and detained individuals.

Article IV, Section 6.D.2(b). Detention Division

> There shall be a Detention Division, responsible for operating secure detention facilities in reasonable proximity to the courts. The division shall oversee the humane detention and care of individuals held under judicial authority, observing and preserving the Rights guaranteed by this Charter.

The Judiciary may need to keep people in detention. Perhaps they are holding individuals transferred from Executive Branch custody during an active trial in the District or Immigration Courts. Maybe an individual has been detained for contempt. Whatever the reason, the JES will need to operate detention facilities, likely limited in scope. The Detention Division handles this. In plain language, they are the jailors for the JES.

Article IV, Section 6.D.2(c). Observation Division

> There shall be an Observation Division, responsible for monitoring compliance with judicial injunctions and procedural directives. The Observation Division shall not have investigative authority. It may act only under direct, written instructions from a judge or panel of judges.
>
> If a Federal Judge issues a contempt order, a written, signed arrest warrant shall be forwarded to the Observation Division to arrest the individual(s) held in contempt and remand them to the Detention Division.

Occasionally, Federal Judges have reason to doubt that their orders will be obeyed. That's where the Observation Division comes in. That judge can issue a written instruction to the

Observation Division to observe and verify whether the order has been carried out. Note that nothing here empowers them to make an arrest, absent a signed arrest warrant from a Federal Judge.

This is also where the teeth are. If a Federal Judge issues an arrest warrant for contempt, this is who executes it. They arrest the individual(s) and transfer them to the Detention Division. This function is unlikely to be invoked often, but it is the most essential of the JES's functions. It gives the Judicial Branch true enforcement power and independence.

The Observation Division is the one John Marshall would have relied on to enforce his order.

***Article IV, Section 6.D.3. Limitations of the Judicial Enforcement Service***

> The Judicial Enforcement Service shall not carry out general law enforcement. It exists to protect the integrity of the Judicial Branch and the Rights of those interacting with it, not for general law enforcement.

The JES is limited, and this subsection outlines those limitations. The first is that the Judicial Enforcement Service is not a general law enforcement agency. It exists for a specific purpose: protection of the Judicial Branch's independence and the rights of people who are part of it or interacting with it. It is *not* there to find out if you have weed in your backpack or parked illegally. In fact, it's barred from those activities, since neither is likely to impact the areas of the JES's concern.

> Directors, Division Commanders, Officers, and Deputies of the service are barred from conducting investigations, except for the legitimate activities of the Observation Division, as outlined here. They may arrest or detain individuals only when acting under a signed judicial warrant, or when responding to a clear and immediate threat to life, physical safety, or the integrity of Judicial facilities.

This is what they are allowed to do under the law. It is clear and narrowly defined.

> In the case of clear and immediate threats, such arrests must be publicly reviewed by a judge who was not involved in the matter, randomly selected from a standing panel of District and Provincial Judges approved in advance by the Chief Justice. This review must occur within three (3) days to ensure that sufficient grounds existed for the arrest. Any person arrested without a warrant in this way is to be remanded to Executive Branch law enforcement within twenty-four (24) hours.

When the JES *has* to step out of their usual lane to address imminent threats, they can do so, but they'll be scrutinized. Not if there's a problem. Not once every *x* arrests. Every. Single. Time.

And anyone they arrest has to be turned over to the Executive Branch within a day.

Try to shoot up a courthouse? You'll be arrested. But the cop who does it will have to explain why they did it, and they'll be turning you over to the FBI.

# Article IV, Section 7 – Constitutional Offenses, Limitations, and Special Liability

## Article IV, Section 7.A. Treason

> Treason against the United States shall consist only in levying war against them by a Citizen of the same, or in adhering to their enemies—whether foreign states or organized non-state actors engaged in hostilities or armed conflict against the United States—giving them aid and comfort, or by a President or Vice President refusing to vacate office when legally required to do so under this Charter.

The framers of the Constitution of 1789 defined exactly one crime in that document: treason.[1] Why? Because treason had been defined by the English Crown as almost anything they deemed as "against the State." The framers agreed that treason exists, but they wanted it clearly and narrowly defined. The common vernacular of the American people in 2025 is more like the British Crown than the framers, but the courts have generally held on this point, fortunately.

When I considered whether to include a definition of treason in the Charter and what it would be, I quickly decided it needed to be included. As for what it meant, I felt it needed to

[1] *See* **Constitution of 1789,** Article III, Section 3, Clause 1.

be updated. As I worked through other provisions in the Charter, I also very slightly expanded it to cover a potential gap.

So what's the same? It still includes levying war against the United States by one of its Citizens. It still includes adherence to an enemy, giving them aid and comfort. All of that is almost word-for-word (intentionally) from the Constitution of 1789.

What's updated? Two things. First, clarification that treason can only apply to a U.S. citizen, which should be obvious. Second, however, is a more precise definition of who is an enemy. It can be another nation. It can also be non-state actors engaged in hostilities or armed conflict with the U.S. So, terrorist organizations that attack the United States would be enemies. But someone, even an organization, that says vile things about the United States is not. That probably feels inadequate to someone wanting accountability for hateful rhetoric, but the distinction is essential. Without it, the scope creeps until we are back to King George III's definition. We don't want that. It isn't who we are or aspire to be.

And what's the expansion? Right now, a President or Vice President who refused to vacate office when obligated to do so might be charged with insurrection. As serious as that charge is, it's too weak. This Charter calls that refusal treason. Why? It is an attack on the very constitutional order that defines the United States. It isn't literally war, but it is the civic analog to levying war against the United States.

No Person may be convicted of treason unless the charge is proven beyond a reasonable doubt. This may include physical, digital, or testimonial evidence. If the

conviction relies solely on personal testimony, at least two witnesses must testify to the same specific act. A confession in open court remains sufficient.

The Constitution of 1789 specifies that a person can only be guilty of treason if they confess or if there is testimony from two witnesses to the same overt act. That's not the only way to establish proof in the twenty-first century. This passage updates the evidentiary burden to match current technology, but it still requires proof beyond a reasonable doubt. And, hey, if two witnesses *do* testify in open court to the same act, well, that's still the minimum standard for eyewitness testimony.

The penalty for Treason shall presumptively include the suspension of the right to a passport, but not nationality. A jury may, at its discretion, impose additional penalties that are consistent with this Charter and clearly authorized by statute.

This outlines the minimum penalty. It also bans stripping the guilty of nationality, because that is a civic right[2] and aligns with the Universal Declaration of Human Rights.[3] Beyond that, Congress has the power to enact laws imposing other punishments, and juries are free to impose them.

Peaceful protest or civil disobedience, even when disruptive, is expressly excluded from the definition of Treason.

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[2] *See* **National Charter of the United States** (unratified), Article I, Section 2.B.3(a). Nationalit

[3] *See* **Universal Declaration of Human Rights (UDHR),** United Nations General Assembly Resolution 217, Third General Assembly, Part A. Article 15. "Everyone has the right to a nationality."

There is a disturbing trend in American politics to frame protests that are counter to one's beliefs as treason. They aren't and never have been, but this Charter adds this sentence to hammer the point home.

**Article IV, Section 7.B. Terrorism Against the United States**

> Terrorism Against the United States means using violence, large-scale destruction, or massive, coordinated disruption of infrastructure to force political change or influence government decisions by threatening or harming the People or institutions of the United States.

Terrorism is the new treason. The charge is thrown around carelessly in precisely the same way treason is. That's why it's defined in the Charter. It needs guardrails around it. I don't know how many other ways there are to say it. Opinions and actions that you don't like aren't automatically a betrayal of America.

Right here, right now, it's defined. There are three prongs:

**1.** Behavior that

- Uses violence, or
- Large-scale destruction, or
- Massive, coordinated disruption of infrastructure

**2.** For the purpose of

- Forcing political change, or
- Influencing government decisions

**3.** By means of threatening or harming

- The American people, or
- The Institutions of the United States

All three prongs have to be "true." Fail even one, and it isn't terrorism.

> Any Person who commits such acts—such as mass killing, hostage-taking, cyber sabotage of essential systems, or other attacks using military-level force or dangerous technologies—shall be guilty of this crime.

This passage gives a non-exhaustive list of example behaviors that *could* meet the definition.

> For Citizens, the penalty for Terrorism Against the United States shall presumptively include suspension of the right to a passport, but not nationality. A jury may, at its discretion, impose additional penalties that are consistent with this Charter and clearly authorized by statute.
>
> Peaceful protest or civil disobedience, even when disruptive, is expressly excluded from the definition of Terrorism Against the United States.

These two paragraphs mirror the provisions for treason.

> This offense applies to any Person, regardless of Citizenship or nationality.

This sentence isn't a throwaway. Terrorism is so similar to treason under this Charter that it's necessary to point out this distinction: while treason can, by definition, only apply to citizens, terrorism can be applied to anyone.

**Article IV, Section 7.C. Failure to Fulfill a Civic Duty**

Civic duties are a cornerstone of this Charter. They help establish the citizenry as the informal, but sovereign, fourth branch of government. Those duties include:

- Jury service
- Election work
- Service as a Redistricting Commissioner or alternate
- Membership on the Federal Election Commission
- Membership (as a citizen) on the Judicial Nomination Board
- Membership in a convened Demi-Congress

These functions are essential to maintaining genuine citizen sovereignty.

This is the Spider-Man principle. (No, I'm not being silly; this is deadly serious.) "...With great power there must also come—great responsibility."[4]

If you refuse to fulfill your duty, you are turning your back on the responsibility that comes with the power of sovereignty. This subsection defines the nature of the failure and the personal consequences associated with it.

| Failure to Fulfill a Civic Duty is a civic offense, not a crime. |
|---|

[4] *A***mazing Fantasy, Number 15**, written by Stan Lee and illustrated by Steve Ditko, MARVEL COMICS (August 1962).

"You've criminalized missing jury duty." Have I? This says otherwise.

> A unanimous jury must find, beyond a reasonable doubt, that:
>
> 1. The Citizen failed, on at least two occasions, to perform specific Civic Duties named in this Charter; *and*
> 2. The Citizen acted with malicious intent, negligence beyond mere oversight (reckless disregard for a known duty), or recalcitrant intent (deliberate refusal to comply with lawful authority).

Holy cow! That is a high standard of proof. You have to fail *at least twice*[5] to fulfill your duty. If, and only if, that is provable, then the government also has to prove you acted with malicious intent (hard to prove), negligence beyond mere oversight (which it defines in-line), or recalcitrant intent (which it also specifies in the text). Also, notice that, even though this isn't a criminal offense, the standard to adjudicate is the same: 'beyond a reasonable doubt.'

This isn't a capricious or easy-to-prove charge. The failure is serious, and so is the burden of proof.

> Upon adjudication that the Citizen Failed to Fulfill a Civic Duty, the Citizen will be required to participate in sixteen (16) hours per month of uncompensated civic service

[5] *For more detail, see* **National Charter of the United States** (unratified), Article I, Section 2.C.1(b). Enforcement of Civic Duty *Notice that two failures are the* minimum *threshold for charging, but* mandatory *enforcement isn't until four failures.*

for a period of two (2) years. Civic service shall consist of duties as defined by law. Congress must define these duties such that they:

1. Are related to, but not the same as, civic duties required by this Charter (ex., handling jury summons, rather than service on a jury); and
2. Require real effort; they may not be "cushy" assignments.

Specific duties, once defined, must be assigned to adjudicated Citizens via a random process determined by law, such that it is free from manipulation by the Citizen or others working on their behalf.

Here is the personal consequence for failing the collective civitas. You're still going to serve. You could have done the right thing and gotten paid; you likely would have had to serve far less time, too. Or, if you decide to neglect your duty, other, unpaid, duties will be assigned at random. Those duties will *still* serve the civic good. And you'll do it for 16 hours a month over the course of the next two years.

Employers and other stakeholders must not retaliate against Citizens who are required to carry out supervised civic duties.

Yeah, some bosses are shady. This single sentence protects you, even when you're facing the consequences of your failure.

**Article IV, Section 7.D. Failure to Uphold Oath of Office**

Failure to Uphold Oath of Office is a civic offense and means a sustained pattern of action or inaction that shows willful disregard by an official for their oath and:

- Causes substantial harm to the Rights of the People or to a lawful government function; or
- Is not excused by reasonable reliance on existing law or duty; or
- Is done with the intent to subvert, ignore, or abuse authority granted by this Charter.

Adjudication requires that the failure be proven beyond a reasonable doubt by jury verdict or plea. Civil disagreement, honest error, or failed policy is not sufficient.

It drives many citizens crazy that government officials don't uphold their oaths. I don't have a number for that, but I see it in comments and hear it in conversation. I'm sure I'm not alone in that.

This addresses that outrage. Like Failure to Fulfill a Civic Duty, the bar to prove this civic offense is high. It requires a sustained pattern of behavior (including *failure* to act) that disregards the oath of office, plus meeting one prong of a three-part test. The language is clear, so I won't restate it here. But the bar for adjudication is the reasonable doubt standard. There is also an explicit statement that this isn't for political disagreement or error. It's for wilfully ignoring the requirements of the oath of office.

> The penalty for this civic offense consists solely of removal from office, if still serving, and permanent disqualification from holding any future federal office.

A lot is happening in this sentence.

"Consists solely" means that's it. There are no other consequences.

"Removal from office, if still serving," carries a lot of freight. Removing them from office is clear enough, but the inclusion of "if still serving" signals this charge can be brought *after* the official has left office.

"Permanent disqualification from holding any future federal office." That means exactly what it says. If an official fails to uphold their oath and that is adjudicated in court, their political career is over. Full stop.

**Article IV, Section 7.E. Sedition**

> There is no crime of Sedition, nor may Congress enact any sweeping legislation regarding speech or expression critical of the government or alleged to support its enemies.
>
> This provision must be read in light of the Charter's guarantees of speech and media freedom.

Do we believe in free speech, or not? If the answer is no, we can throw away this entire Charter and commentary. We can dispense with that meddlesome Constitution of 1789. Hell, we can stop voting. After all, what is voting, really, if not a very specialized form of free speech?

On the other hand, if we *do* still value it, we logically have to reject the notion of sedition. Sedition is a speech crime. If I say "The government is corrupt and should be replaced" (which, quite frankly, is exactly what this commentary does), I should be allowed to do so. But if we have laws against "sedition," couldn't that be seditious? I'm calling for the replacement of the current constitutional order with a new one, right?

But wait. You know who else did that? George Washington. Alexander Hamilton. James Madison. All the other men who attended the Philadelphia Convention in 1787. Was that sedition? Of course not! And neither in their case nor in mine was, or is, there any call for violent overthrow. There's no call for civil war or rebellion.

But there was an overreach, early in our republic. In 1798, even as the Constitution of 1789 lay on the table letting the still-fresh ink dry, Congress passed (and *John Adams* signed) the Alien and Sedition Acts of 1798. They criminalized criticism of the federal government, and the *founding era people of the United States* widely criticized them. All of them except the Alien Enemies Act of 1798 were either repealed or allowed to expire.

I hope the problem here is clear. Sedition, by its very nature, is a problematic concept in a free republic. This Charter recognizes that and rejects it, wholesale.

"But what if you *did* call for rebellion?" That's a good question. But that's a different beast, isn't it? That's incitement. But there can be a narrowly-tailored, rights-protective statute for it. That's still preserved as an unprotected category under this charter. Specifically, that would be "Speech intended and likely to incite imminent lawless action or panic."[6] Congress could pass a carefully crafted, narrowly tailored law to criminalize it. Still, calling for systemic change, even for radical change, isn't the same as calling for people to rise up violently right now.

**Article IV, Section 7.F. Liability for Autonomous Systems**

> Autonomous systems are deployed, operated, and maintained by humans. Therefore, the humans who deploy or maintain them fully are responsible for all actions carried out by those autonomous systems.

Let's say Wrong Way Delivery Drone Systems has deployed a self-flying parcel delivery drone. What if, on two separate instances, the AI flying the drone directs it to crash into the ground? That's exactly what this subsection is about. It simply says the deployers and maintainers of the automated system (Wrong Way Delivery Drone Systems, in my example) are liable. The AI didn't do it. The system deployed and maintained by human beings did it, and those humans bear the responsibility for it.

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[6] **National Charter of the United States** (unratified), Article I, Section 2.B.2(ab$_1$). Unprotected Categories, first enumerated point.

There is nothing about this that is or should be controversial. The reason it is included is that it is an emerging and predictable vector of liability. This shuts the gate *before* the cows get out.

# ARTICLE V – FEDERALISM

## Article V, Section 1 – Structure of the Federal System

### Article V, Section 1.A. Overall Structure

> Sovereignty in the United States shall be layered. The Citizens are supreme and inherently possess ultimate Sovereignty. The Citizens have delegated authority through this Charter to the Federal Government. The Federal Government shall be supreme over those matters delegated to it by the Citizens via this Charter. The States and the Tribes shall be subordinate to the Federal Government, but shall otherwise exercise sovereignty within their jurisdictions.

Since 1789, the United States has been a federal system. There is a central government, but local matters are governed locally through the states.

That premise is generally unchanged in this Charter.

Where power *comes from* hasn't always been so clear. Some have said that it comes from the states that had already existed under the Articles of Confederation. Others point out that the preamble begins with "We the People."

This Section is unambiguous.

1. Under this Charter, all power and authority rest in the citizens. Throughout Articles I-IV, this has been a clear and recurring refrain.
2. They delegate power to the federal government via the Charter.
3. The states still exist. They remain sovereign in the same manner as under the 1789 Constitution. They are subordinate to the federal government. That's generally a preservation of the system under the Constitution of 1789.[1]
4. The recognized tribes as a body are recognized as a sovereign unit, which the 1789 Constitution only hinted at.[2] Though sovereign, they are subject to the federal government.

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[1] The reason I say "generally" is that there are a few changes that enhance the sovereignty of states, like the means of selecting senators, but there are also some new limits on states, like the changes in election administration we'll see in Article VI. Overall, the effect is one of continuity, but I don't want to be guilty of glossing that there are some differences.

[2] *See* **Constitution of 1789,** Article I, Section 8, Clause 3: "To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." To be sure, this doesn't unambiguously affirm sovereignty, but there's more here than just "a group of folks." There is an implicit recognition of a coherent polity. *See also* **Ibid.,** Article II, Section 2, Clause 2: "He shall have Power…to make Treaties…." The fact that we made treaties with many of these Tribes again suggests sovereignty, even if it isn't explicitly stated. You can't make a treaty with an entity that lacks the sovereignty to do so. The fact is that the United States has a sorry racist history of redefining that relationship in whatever way seems convenient at the time. Still, the precedents exist, and the implication is there. We reject the reduction of these people to "mere savages" who are unworthy of recognition under our laws. We have, when convenient to do so, referred to these indigenous peoples as sovereign. Once recognized, that can't be withdrawn. This Charter refuses to pretend that it can be.

**Article V, Section 1.B. Territorial Sovereignty of the States and Tribes**

***Article V, Section 1.B.1. General Territorial Sovereignty***

> Within the limits imposed by this Charter, the States shall exercise Sovereignty within their borders, and the Tribes shall exercise Sovereignty within the borders of recognized Tribal lands. Federal jurisdiction shall extend to both States and Tribal lands equally, and all limitations on Federal jurisdiction and Powers shall apply equally in both cases.

For all of our history, States have generally enjoyed sovereignty, and this continues that legal tradition.

What *hasn't* been the case is the same treatment of Native Americans' territorial sovereignty. The full, unvarnished truth is that my ancestors forcibly relocated theirs. The federal government, to this day, recognizes the sovereignty of tribal lands only selectively.

That history can't be undone. However, this Charter draws the line: no more. Tribal lands are treated like state lands, full stop. The federal government would never even attempt to relocate all the citizens of Delaware. On the flip side, Delaware is required to recognize the FBI's jurisdiction within their lands. The FBI is obligated, as part of the federal government, to protect the citizens of Delaware in exactly the same way as the citizens of Florida. If, for example, women in Delaware were disappearing or being murdered at a disproportionately high rate, the FBI would treat it the same way as if it had happened in Tennessee.

***Article V, Section 1.B.2. Recognition of Tribal Lands***

> Recognition of Tribal lands shall, by default, mean those lands recognized by the federal government at the time this Charter is ratified.

"Gary, we've never been able to collectively agree on what the tribal lands *are*." Well, that's mostly not true. We've ignored it when convenient. Still, there is a kernel of truth to this argument. For tribal lands to have sovereignty in the same way that states do, there needs to be a means that we can all agree, once and for all, what those lands are.

> Any lands for which federal recognition or restoration proceedings were pending at the time of ratification shall complete the appropriate legal or bureaucratic review in progress, and the results of that review shall become binding law. Any such claims retain full access to the totality of the Federal Judiciary.

"That solves most of it, but what about cases that are in bureacratic review, or cases that are in the courts when the Charter is ratified? Are the Native Americans just screwed in those cases?" Nope. There's a mechanism for it. But once it's settled, it's settled.

> Congress may, subject to ratification by the majority of the Citizens voting in a Federal referendum, designate additional lands as Tribal, but once so designated, that designation may never be revoked under this Charter.

"Our people have other claims that haven't been addressed. There must be some way to review those claims."

Well, a case could be made for every square inch of land on the continent, so that's a broad category. Decendants of settlers have lived on various lands for centuries. By the same token, and just as an example, the Comanche moved into the plains somewhere in the late 17th or early 18th centuries. Is that land theirs, or does it belong to the tribes they displaced? Why is their claim stronger than the settlers? I'm not taking a side on any of it; I'm pointing out that there isn't a coherent line in the sand that can be drawn.

Still, there can be room for discussion. If Congress chooses to grant land back to the tribes and a majority of citizens vote to ratify that grant, it becomes permanently and irrevocably tribal land.

***Article V. Section 1.B.3. States Rights***

> The Citizens have, through this Charter, delegated those powers not granted to the government instead to the States or Tribes, provided those powers are not exercised to derogate the Rights of the People.

Yes, the states have rights. But those rights are delegated by the citizens and can't be used to deprive the people of their rights.

See, the Tenth Amendment tried to get this right, but the order was inverted[3] because the Founders feared the people. But they forgot the most important tenet, the one upon which we declared our independence: the consent of the governed.[4]

At various times and in various circumstances, states' rights have been invoked to deprive people of their rights rather than to secure them. This Charter draws a bright, prohibitive line around that behavior and says, "Absolutely not."

In other words, George Wallace and Strom Thurmond can pound sand, but yes, states have sovereign powers.

## Article V, Section 2 – Full Faith and Credit

> Each of the States must give Full Faith and Credit to the legal judgments, legislative acts, regulations, records, and official acts of the other States. No State is required to enact identical laws or policies. Travelers and interstate migrants are nonetheless entitled to the recognition and protection of any legal status or right previously held under the laws of the original State. This Right cannot be abridged by courts, legislatures, executives, or constabularies of any kind or for any reason.

[3] *See* **Constitution of 1789, Amendment X**: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."
[4] *See* **Declaration of Independence,** Thomas Jefferson, *et. al.* (1776): "That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed...."

Since 1789, the United States has operated under a Federal system. Under that scheme, each state is a sovereign entity, trumped only by the federal government's greater sovereignty. This Charter picks around the edges here and there, but generally doesn't change that overarching philosophy. So now, just as was the case with the Constitution of 1789, we're left with this problem: what happens when one sovereign state doesn't want to recognize the authoritative sovereign acts of another state?

The Framers wrestled with this. They wrote protection into the Articles of Confederation.[1] Still, controversy remained whether other states' records were mere evidence or operated to force effect.

When they wrote the Constitution of 1789, they wrote something similar, but they expanded the language to include legislative acts. They also empowered Congress to specify the effect of the full faith and credit.[2]

Over time, there has been debate about when and how full faith and credit apply. The specifics of that ongoing debate aren't as important to my point as the fact that it has persisted. When does one state have to honor the judgments of another state, and what does that look like? That's the core issue.

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[1] *See* **Articles of Confederation of 1781**, Article IV, Section 3: "Full faith and credit shall be given in each of these states to the records, acts and judicial proceedings of the courts and magistrates of every other state."
[2] *See* **Constitution of 1789**, Article IV, Section 1: "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings for every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

Here, the Charter starts on familiar ground. The first sentence is very similar to that in the Constitution of 1789. There is one significant difference (and I'm sorry for getting "legally" here), though. The 1789 document uses "shall." This Charter uses "must." They both mean roughly the same thing, but "must" conveys greater urgency and immediate necessity.[3] Next, where the Constitution of 1789 gives Congress latitude to set the parameters of full faith and credit, this Charter says what full faith and credit means. It is extremely clear about the duties that it imposes on the states. The passage closes with a clear ban on any abridgment, regardless of source.

[3] Anywhere that you see the word "must," it means for you to sit up straight and take notice, because zero leniency exists.

> To be clear, for example, a resident of the fictional state of Oak receives a marriage license in Oak and is married, with that marriage being recorded in Oak. That person then moves to the fictional state of Rowan. In Rowan, marriage is only permitted between right-handed people, but the former resident of Oak is left-handed. Rowan is not obligated to extend marriage to left-handed residents in Rowan, but must recognize, conferring all the usual rights and privileges to the former resident of Oak, since their marriage was lawfully conducted, licensed, and recorded under the laws of Oak. Mere regulatory inconvenience is insufficient to deny Full Faith and Credit.

The Charter then adds this passage with the introductory phrase "to be clear," making its point that this is intended to provide illustration and eliminate any confusion about the meaning. It then provides a farcical example that clarifies what the application of full faith and credit looks like. This is extremely unusual in blackletter. Examples are usually reserved for commentary. The fact that it is included should signal to all how serious the Charter is about Full Faith and Credit.

Why is that necessary? Because "Full Faith and Credit" is largely ignored. It appears in the 1789 Constitution, and civics textbooks make a big deal about it, but it has little practical effect.

A perfect example is a case from 1945. In *Williams v. North Carolina* (1945),[4] the Supreme Court held that North Carolina wasn't obligated to recognize divorce decrees from other states if the parties had never established a real domicile in the state where the divorce decree was issued (in this case, Nevada).

The general facts were that two individuals were married to other individuals and had domiciles in North Carolina. Both traveled to Nevada and obtained divorce decrees there. They subsequently married in Nevada and returned to North Carolina to live. They were prosecuted for bigamous cohabitation (hey, it was the 1940's). They pointed to their Nevada divorce decrees for their defense, but the Court held that North Carolina didn't have to honor them, because they had not established a domicile in Nevada.

Under this Charter, no one can assert that a marriage or divorce is invalid in one state when it was legally executed in another (good news for Las Vegas). No state can deny a parent or guardian child custody if it was lawfully obtained in another state. A state can make its own laws and judgments, but can't nullify another state's laws or judgments by official fiat.

## Article V, Section 3 – Equal Protection Under Federalism

> All Persons are entitled to the Rights and equal protection guaranteed by this Charter, regardless of their place of residence.

[4] See *Williams v. North Carolina,* **Volume 325 United States Reports,** opinion begins on page 226 (1945).

This section defines the boundaries of state power under federalism. This first sentence is designed to prevent states from manipulating those boundaries to erode federally guaranteed rights.

> Any Citizen who has been a permanent resident of a State for at least six (6) months must be recognized as a Citizen of that State, and any previous State Citizenship is automatically transferred. Any person born within a State is a Citizen of that State at birth. A State may establish a minimum period of residence required to qualify as a permanent resident, but this period may not exceed ninety (90) days.

This passage defines how state citizenship is determined. There are a few points worth highlighting. First, there is no citizenship application. A citizen of the U.S. becomes a citizen of a given state after six months of legal residency. States can require a limited waiting period before legal residency kicks in, but no longer than three months. And to foreclose attempts to game birthright citizenship, it's explicitly established for states here, as well.

> Rights, privileges, and immunities granted by any State may be reserved to the Citizens of that State, as determined by legal residency. A State may deny benefits paid solely through revenues whose origin is within the State to persons who are not its Citizens. Otherwise, States may not engage in any form of discrimination against Citizens of other States.

States don't have to give citizens of other states the same rights and so on (except for those federally guaranteed, of course).

BUT.

They can only deny benefits to non-citizens if the revenue that funds them comes entirely from the state. Benefits with state-federal co-funding can't be withheld.

And except for withholding rights granted at the state level, local immunities, and local privileges, states can't otherwise discriminate against the citizens of other states.

## Article V, Section 4 – State-to-State Extradition

> States must return fugitives to other States where they are charged with crimes, if formally requested to do so.

There's really nothing to add here, except to note that this section *does* require a formal request for the extradition of a fugitive. The other state isn't expected to conduct constant sweeps for fugitives, and they don't have to return a fugitive unless asked.

I lied. There *is* something to add here. The word "fugitive," when coupled with state-to-state transport, carries racially loaded freight. I want to address it right here, not because the language here is equally guilty, but because there is an established historical record.

Before the Civil War, there were fugitive slave laws that required the return of escaped slaves, even from non-slaveholding states. Those laws were immoral and unjust. This is aimed at something entirely different. It addresses criminals who flee across state lines to escape justice.

I acknowledge the evils of slavery, and this Charter explicitly bans the practice, both in the open and in prisons.[1]

## Article V, Section 5 - Statehood

### Article V, Section 5.A. Admission to Statehood

> Only Territories may be admitted as new States into the Union.

This may seem strange. What's this subsection all about? We haven't added a state to the Union since Alaska and Hawaii in 1959. But geopolitics changes, and we may admit other states to the Union at some point (even if it messes up our flag).

So what's the reasoning behind requiring territorial status first? This preempts the conquest of land and immediate investiture with statehood. The people of a region under our control must want statehood before it is granted to them. Have they accepted and

[1] *See* **National Charter of the United States** (unratified), Article I, Section 2.B.2(d). Protection from Enslavement or Involuntary Servitude.

adapted to our political culture? Do they have enough citizens to make statehood make sense?

This Charter does away with the concept of "possessions." A region is a state or a territory.[1] So non-states spend time as territories, with the limitations and rights inherent in that status. If they want more or better membership in the Union, they can move toward statehood through the established channels, which we discuss next.

A Territory may become a State only if all the following conditions are met:

1. The Territory has been part of the United States for at least ten years, and
2. The Territory's population exceeds five hundred fifty thousand (550,000) Persons, and
3. A three-fifths ($^3/_5$) majority of votes cast in a lawful Territory-wide Citizens' referendum approve Statehood.

Converting from a territory to a state is a three-step process. The first two are automatically triggered: a population of at least half a million people and 10 years of U.S. territorial possession.

[1] *For the definition of Territories in this Charter, see* **National Charter of the United States** (unratified), Article V, Section 10 – Territories.

Why 550,000? That's the threshold for a congressional district, and every state gets at least one Representative. Otherwise, there's nothing particularly holy about the number. I just didn't want anyone saying, "But what about...."

I have already addressed the ten-year waiting period in explaining why the region must first be designated as a territory.

Once those conditions are met, Citizens can convene a referendum. If 60 percent of the votes cast are in favor of statehood, then the Senate, the chamber of Congress that speaks for the States, has to vote within ten days. A simple majority is enough to ratify statehood. And if the Senate fails to vote, that also ratifies it.

So, why a supermajority of the Citizens? It's the same threshold required to ratify the Charter.

Multiple Territories may band together to meet the population threshold, but in so doing, bind themselves irrevocably as a single State if their Citizens approve statehood.

Some territories have no chance of ever meeting the population threshold for statehood. Are they consigned to permanent status as a territory, even if their citizens want statehood? Not necessarily.

There's a pathway, but it comes with rules. Two or more territories can band together to reach the population limit. That's fine. But if their citizens agree to approve statehood, all those territories together only form one state, which can't later be broken up.

A State cannot lose its status and be reduced to a Territory solely due to a population decline.

It is well-documented that people move *away* from rural areas. I suspect that trend will stabilize or even reverse in the future, but I'm no fortune-teller. Either way, this protects less populous states from losing their status if their population dips below the entry threshold.

**Article V, Section 5.B. Secession**

Have you ever been fundamentally against doing the thing you knew you *had* to do?

That's how I felt writing this subsection. I fundamentally believe the South was wrong. I fundamentally reject everything they did, as well as the way they did it. The very thought of secession induces anger in me.

But here's the thing. If we are serious about consent of the governed (I am), then we can't shy away from the fact that a political unit may withdraw its consent at some point. Setting aside the reasons it was done in the past,[2] doesn't it make sense to provide a peaceful means for withdrawal from the Union? Isn't that both logically and morally consistent?

As much as I hate the *idea*, I think the answer to those questions is "yes."

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**2** It was over slavery. Full stop. Slavery is directly mentioned over and over in the Articles of Secession of the various states. I will not entertain arguments to the contrary because they ignore documented history.

> In keeping with the principles of Consent of the Governed and political stability, a State may secede from the Union, but only if a three-fourths (¾) majority of votes cast in a lawful Statewide referendum approve secession.

But it doesn't have to be easy. Three-quarters. Not the three-fifths that appears everywhere else. It takes three-quarters of the state's voters to agree to secession. Why? Think about the ones who don't want to secede. What happens to and for them? Anonymity won't happen, but overwhelming support isn't unreasonable to demand. At one point, I even considered an initial referendum, followed by a second, confirmatory referendum a year later.

This isn't academic for me. I live in Texas. Secession is a topic that crops up every couple of years. I'm against it, and I've wondered how I would deal with finding myself in the Republic of Texas while still considering myself a U.S. citizen. Would I still get my veteran's benefits? What about my Social Security account? Could I still vote in the U.S.? The considerations are real for those who *don't* agree to secession.

> If such a referendum succeeds, the secession shall take effect on the first day of January of the first calendar year that is at least one hundred (100) days after the vote.

This gives (a very short) window of time to work out the details of secession between the state and the federal government they are withdrawing from. However, there's nothing

besides political will and inertia that precludes negotiating and settling much or all of the details *before* the referendum.

> The seceding state does not have a right to any federally owned assets, including facilities, equipment, land, or other tangible property.
>
> The seceding State also may not take with it any Tribal lands, unless assented to by the Tribal Council.

If a state really wants to leave, it can. But they don't suddenly own all the U.S.'s stuff. This is important. Remember, the Civil War didn't start with secession; it began when the Union tried to hold Fort Sumter, a federal base on an island in Charleston Harbor.

Any seceding state is on notice that the U.S. has the right to defend what it owns.

It is vital to understand the ramifications of that ownership.

The state also doesn't get to unilaterally decide that tribal lands within its borders go with it when it leaves the union. That *might* happen, but only if the Tribal Council agrees to it.

The United States would be obligated to defend any tribal lands that a state tried to unlawfully and unilaterally take control of during its secession.[3]

[3] *See* Article V, Section 1.B.2. Recognition of Tribal Lands.

> Any seceding State that later wishes to return to the Union may only do so as a Territory. Readmission requires a three-fifths ($^3/_5$) majority in both chambers of Congress in assent. Once readmitted, the new Territory may not hold a referendum on Statehood for at least ten (10) years after the date of readmission.

It's not impossible to return to the Union after secession. But a state doesn't just go back to the way things were. They chose to leave. They have to convince Congress to readmit them, and then only as a territory. Once that's done, they have to wait the same ten years to apply for statehood as any other territory would.

**Author's Note:** When I say I didn't want to do this and that it makes me angry, I mean it. I'm shaking as I finish typing this commentary. This is what it looks like to put principle before preference.

## Article V, Section 6 – State and Federal Obligations

> The United States shall guarantee each State and all recognized Tribes in the Union a Republican form of government. In like fashion, every State and the Tribal Council shall, in turn, provide its People a Republican form of Government.

This echoes the Constitution of 1789.[1] There is an added requirement that the states also guarantee their people republican state government. A reasonable question might be why I didn't consider allowing direct democracy at the state level. The answer is that direct democracy is both vulnerable to the tyranny of the majority and unworkable at scale. The first flaw can be engineered for, but the second is fatal.

> Every State and the Tribal Council must release its National Guard to Federal control when legally federalized by the President.

Each state controls the day-to-day operation of its militia – the National Guard. However, the President can nationalize the Guard of a given state under certain conditions.[2] As long as that's done lawfully, the state is *required* to release control to the federal government.[3]

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[1] *Compare to* **Constitution of 1789,** Article IV, Section 4.
[2] *See* **National Charter of the United States** (unratified), Article V, Section 8 – The National Guard.
[3] Yes, this may create litigation surrounding whether the President acted lawfully, but that's what the Supreme Court is for.

The United States shall protect each State and Tribal land against invasion. Upon request by the Governor of a State, the Tribal Council, or a State legislature, when the Governor is absent or incapacitated, the President shall fortify that State's or Tribes' National Guard with Federal forces for defense against invasion or rebellion.

Such a request must be submitted to Congress, which must vote within three (3) days on whether to authorize federal intervention consistent with this Charter and the Rights it protects. No intervention may occur without Congressional authorization. That authorization shall mandate the conditions for its conclusion and withdrawal.

Once authorized, the President shall not delay, withhold, or refuse to execute the intervention as approved by Congress.

The Federal government is required to defend the states and tribal lands. They can also request military assistance from the President, which Congress must authorize and limit.

The President must not command federal troops to use force against the People of the State or Tribes. The President may and must use force against rebels once war is declared against them, as outlined in Article II, Section 4.H.1.

A government that uses force against its people, absent a real rebellion, is illegitimate. A government that refuses to defend its people against a rebellion is also illegitimate. This

passage bans the use of force against the civilian populace, but once a force has rebelled, it compels the government to act. The specific trigger and definition are cross-referenced in the Charter text to avoid ambiguity.

## Article V, Section 7 – Prohibition of Sovereign Immunity

Imagine a system where the government can choose policies for expediency, year after year, without maintaining critical infrastructure. One day, a great storm struck, and the systems that were built to protect the people failed. Over a thousand people died. When the survivors tried to hold that government accountable for its failures, they were told that the government can't be sued for actions involving policy choices.

Does that sound far-fetched? It isn't. That is the story of New Orleans and Hurricane Katrina.

That's the doctrine of Sovereign Immunity. Nobody knows or cares about it until their own justice is denied.

But where does it come from?

The origins are a little murky. Generally, Sovereign Immunity stems from, well...the immunity of the sovereign, which in this context meant the sovereign monarch—the king. The king couldn't be sued in his own courts, because he was considered the *source* of justice. It's where the phrase, "the King can do no wrong," comes from.

The idea crossed the sea with the English colonists, finding its way into our laws. After we rejected the monarch, you'd think the idea would have perished. But you'd be wrong; it

mutated, instead. Rather than "the King can do no wrong," the concept shifted to "the sovereign state cannot be sued without its consent." Which is ludicrous, for reasons I don't think I even need to explain!

Now, that's not the whole picture. As early as 1793, Americans were pushing back against this. In *Chisholm v. Georgia* (1793),[1] a man named Alexander Chisholm, who was not a citizen of Georgia, attempted to sue the State of Georgia over payment for goods. Georgia invoked Sovereign Immunity, but the Supreme Court ruled 4-1 that he *could* sue the state.

But powerful interests tend to protect their power. Two years later, the states ratified the Eleventh Amendment.[2] Mr. Chisholm would have found the courthouse door barred to him because he wasn't a citizen of Georgia. That's not great, but I can understand the logic – States should only be answerable to their *own citizens*. OK. I have some problems with that, but I can understand the rationale. After all, a government exists by the consent of the governed, not the consent of everyone on the planet.

But did it stop there? Of course not. In *Hans v. Louisiana* (1890),[3] the court ruled that, under the Eleventh Amendment, federal courts lack jurisdiction when a citizen brings an action against their own state.

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[1] *Chisholm v. Georgia,* **Volume 2, United States Reports,** opinion begins at page 419 (1793).
[2] **Constitution of 1789,** Amendment XI: "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State."
[3] See *Hans v. Louisiana*, **Volume 134, United States Reports,** opinion begins at page 1 (1890).

The Federal government is held immune from suits unless Congress waives immunity, which is primarily through the Tucker Act (1887)[4] and the Federal Tort Claims Act (1946). These pathways provide some means for citizens to seek justice for harm caused by the government, but they are limited and still uphold the doctrine of Sovereign Immunity.

So, that is what Sovereign Immunity is, and how we arrived at this point. What does the Charter do about it?

> Neither any State nor the United States, nor any agency of either, enjoys Sovereign Immunity. Legal standing alone shall determine whether a Person or entity may bring a suit against any State or the United States.

In simple terms, the Charter absolutely abolishes Sovereign Immunity, leaving standing as the only legitimate determination of whether the government can be sued. I wish I had more to say on that, but I covered it all in the exposition.

## Article V, Section 8 – The National Guard

> The National Guard shall be organized at the State or Tribal Council level and functions as the militia for that State or the Tribal Council. The following shall bind the Federal government, the States or Tribes, and the National Guard:

[4] **Tucker Act of 1887,** published in **Volume 24, United States Statutes at Large,** beginning at page 505. This reflects the law as originally enacted by Congress before any portions were reorganized or codified into the United States Code.

- The Guard belongs to the State or Tribal Council, but must be released to the authority of the President as part of the Armed Forces of the United States when federalized.
- All members of the National Guard swear the same Oaths as Federal military personnel. That Oath overrides any conflicting orders from local, State, or Tribal officials acting outside the law. Guard members' duty is to the Charter of the United States first, and their State or the Tribes only subordinate to that.
- The Federal Armed Forces have the responsibility of providing military training for the National Guard.
- Congress must equip the National Guard in each State and for the Tribes.
- States or Tribes may provide additional, non-military training to their Guard units, at their discretion.
- States and Tribes retain control over the routine activity of their Guard units, unless those units are federalized at the time.

The President may federalize National Guard units for the following purposes:

- Defense of the nation;
- Enforcement of this Charter;
- Protection of the Rights of the People; or
- Federalization is automatic at any time when a declared War is in effect.

The States and Tribes have obligations and powers. So does the President. They are cleanly defined.

> No Governor, Tribal Council, State legislature, or other State or Tribal authority whatsoever may use the Guard to resist or undermine this Charter. If the President, with majority assent from Congress, determines such action has occurred or is in progress, the Guard must be immediately federalized. Such a federalization is active at the moment of assent by Congress.
>
> Failure to yield to lawful federalization is a rebellious attack on the United States.

This is the "Faubus-Wallace" provision. Both of those governors called on the guard in their respective states (Arkansas and Alabama) to resist the desegregation of schools in their states. Both capitulated when the Guard was federalized.

This is a high-stakes matter, so the Charter is careful about what it says here.

1. *Any actor at the state or tribal level* is barred from using the National Guard to resist or undermine the Charter.
2. The President can't act unilaterally; they need majority assent from Congress. This is a crucial guardrail.
3. Once the troops are federalized, which happens the *instant* that Congress assents to the President's request, the State or Tribes are required to yield. There is zero wiggle room. If the State or Tribal Council *doesn't* yield control of the Guard, that is a

rebellious attack[1] that could trigger a Civil War. The stakes are clear up front, so that no one can say later, "Oh, I didn't know that would happen."

There is no ambiguity, and the language in this article and Article II is unmistakable on this subject.

[1] *See* **National Charter of the United States** (unratified), Article II, Section 4.H.1. Permissible Enemies, *particularly the second paragraph, where it states,* "Congress shall also have the power to declare war, upon request of the President...against any organized group or coalition that has engaged in coordinated acts of violent armed rebellion or use of armed forces against the United States. Such a Declaration may be made only ***in response to actual attacks***…." This is declaring that failure to yield under these circumstances constitutes an attack.

## Article V, Section 9 – Tribal Sovereignty and Federalism

> Federally recognized Sovereign Tribes must give and receive the same Full Faith and Credit and mutual recognition as do States under this Article.

This one-sentence section ensures the actions of federally recognized Native American Tribes get the same protections as those of states. They are equally required to acknowledge the official acts of states. This reciprocal full faith and credit between states and tribes has not existed before, and it is a grave injustice.

So what if a tribe is forced to enforce a state's order? And what if they don't want to? I'll flip that line of questioning. What if one state is forced by full faith and credit to enforce another state's order, and they don't want to? Or, for that matter, one of the tribe's orders? They have to do it anyway. This passage puts the tribes on equal sovereign footing with the states. They are no longer considered "domestic dependent nations."[1] They are equal in status to states. That means they bear the same burdens, as well.

> Tribal Lands exist on the same physical geography as States. Representation in the House of Representatives is apportioned as part of the State's delegation. State law shall apply on Tribal Lands, and the State shall have the Power and Duty to enforce its

[1] In *Cherokee Nation v. Georgia*, **Volume 30, United States Reports,** opinion begins at page 1 (1831), the Supreme Court ruled: "It may well be doubted whether those tribes which reside within the acknowledged boundaries of the United States can, with strict accuracy, be denominated foreign nations. They may more correctly, perhaps, be denominated domestic dependent nations...they are in a state of pupilage. Their relations to the United States resemble that of a ward to his guardian. They look to our Government for protection, rely upon its kindness and power, appeal to it for relief to the wants, and address the President as their Great Father." The court, in saying this (and the concurrences in this case, by the way, are far more blatantly racist), established the tribes as client-states of the United States in fact, even if not in name. This Charter rejects that classification.

> laws on Tribal Lands with the exact vigor exercised outside of them, except where doing so deprives the Tribes of their Rights under this Charter.

This is the way things are *supposed* to work. They don't always. There are examples of good and amicable relations between tribes and states. There are far more examples of distrust, antipathy, uneven enforcement, and outright discrimination.

First, this clarifies the representation of the *people* living on tribal lands. They are part of the State's delegation and districting scheme.[2] This is the state of play today, but given the restructuring of both Congress and the federal system in this Charter, clarification is warranted.

Second, the state and the tribe with lands within that state owe each other duties as equal sovereigns (amicably) occupying the same physical territory. States must investigate crimes on tribal lands, but they must also respect construction exclusions and other matters dear to the tribes. Tribes must *permit* states to investigate crimes on their lands. There are centuries of distrust that have festered, and it will take time and effort to overcome that. The Charter constitutionalizes the duty to overcome that distrust.

But there will inevitably be disputes that arise. It doesn't even require bad faith on anyone's part, just varying perspectives. How do we resolve those disputes?

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[2] *See* **National Charter of the United States** (unratified), Article VI, Section 2 – Redistricting.

Disputes between Tribes and the States must be resolved by the Supreme Court. Adjudication must give equal deference to the Rights and Duties of both sovereign entities.

The answer is: the same way they would have been resolved between two states.

## Article V, Section 10 – Territories

A Territory shall be defined as land under United States sovereignty that is not a State or Tribal Land and has no sovereign status of its own, even if granted limited self-governance by Congress. Territories shall not be sovereign entities, although Congress may grant them the Power of home rule.

All Territories shall have equal Rights and Status to one another, and U.S. law must be applied equally in all Territories as it is in the States. Insular status shall not exist.

All land owned by the United States must be either a State, Tribal Lands, or a Territory, except for military or diplomatic lands.

Any Territorial land lacking a minimum of ten thousand (10,000) permanent residents must be incorporated into the most geographically proximate Territory meeting that population threshold and may not be considered a separate Territory in its own right.

This clarifies a lot of murky law. Land owned by the U.S. is either a military base, a diplomatic enclave (like an embassy or consulate), a Territory, Tribal Land, or a State. There are no "possessions." Territories are all equal in legal status; there are no "insular cases, " where constitutional rights are diminished or non-existent.

Territories aren't sovereign, and they aren't equal to states. They were never intended to be, and they aren't under this Charter. But they are defined and protected by the full weight of the Charter and the rights it secures.

> Congress shall have the power to legislate rules, regulations, and governing structures for Territories, provided that doing so respects the Rights of the People living within them, and Congress may not impose limits upon Territories' ability to apply for Statehood beyond those imposed by this Charter.

Outside of the lack of representation in the Senate,[1] this is the big difference between a territory and a state. States are fully sovereign, subject only to the provisions of the Charter. Congress may grant territories rights and powers via statutes, but they aren't sovereign, and Congress can revoke those rights and powers through legislation. It is a tremendous difference.

## ARTICLE VI – DEMOCRATIC PROCESSES

### Article VI, Section 1 – Conduct of Elections

If you ask a citizen why they love the United States, the answer you'll probably get back is some variation on the theme that this is a free country. If you dig deeper to find out what

[1] *See* **National Charter of the United States** (unratified), Article II, Section 5.C. Territorial Representation, and **Ibid.,** Article II, Section 6.B.1(b). Territories**.**

“free country” means, you’re likely to get references to the Bill of Rights, especially the First Amendment.

You’ll also hear about the right to vote.

Americans almost universally equate freedom with the right to vote.

That’s why we have to be sure that our voting process remains as fair as possible. We have to know it in our bones.

Some Americans enjoy that confidence today, but it is far from universal.

This Section of the Charter is lengthy. It’s technocratic. It gets complex. I’m begging your patience. Read the whole article before you bristle, because it works as a unified whole.

**Article VI, Section 1.A. Federal Elections**

***Article VI, Section 1.A.1. Timing and Access***

> To ensure that all Citizens have a meaningful opportunity to vote, Federal Elections for federal office and referendums shall be held over four continuous days, beginning on the first Tuesday in November and ending on the following Friday. Federal Elections can happen any year, consistent with other limitations in this Charter. Polls must remain open and accessible for the entire voting period, without interruption. All eligible Citizens must be able to cast their vote at a time that aligns with their individual circumstances, including overnight and off-peak hours.

This is a huge change, right out of the gate.

Self-righteous Americans often criticize their fellow citizens for not voting.

But what about the person who works six days a week, catching the bus by 6 a.m. and not returning home until twelve or more hours later? What about the single parent who only has additional childcare from 4 to 6 on Sunday afternoons? What about the airplane mechanic who works from six at night until six the next morning, so the planes are ready for the next day's operations? How are they supposed to vote? If the scheduling barriers at the polls were removed, some of these folks would still choose not to vote.

But some would. And data backs this up. Long lines and limited hours measurably depress turnout. It's especially true for working-class voters and people of color.

This is for them.

So, all those people I highlighted, who have schedules that make it difficult, at best, to vote between 7 a.m. and 7 p.m. on one special day, now have four glorious, round-the-clock days in which to cast their votes.

"But we've always left the rules of voting to the states." It's true. We have. At its best, that scheme has served us well. But at its worst, bad actors at the state level (and their covert allies in policy-engineering think tanks) have found one barrier after another to place in front of voters.

And somehow, those barriers always seem to affect one particular demographic of Americans disproportionately. Strange.

If only a statute could be enacted.... Oh, wait. There was one! The Voting Rights Act. But the courts gutted it for being "discriminatory" against particular states.[1]

Fine.

It's a fig leaf. For the sake of argument, I'll accept that legal "reasoning." That's because there's another way to fix this: federal elections are federalized. All states have the same rules. *All* voters receive the same protections, regardless of their state of residence. Call *that* discriminatory.

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[1] See *Shelby County v. Holder*, 570 U.S. 529 (2013).

"But that centralizes elections and makes them more prone to opaqueness and centralized manipulation." On its own, yes, federalizing elections would have that effect. But I'll remind you of my plea for your patience. "A journey of one thousand miles begins with a single step."[2] Reforms have to start somewhere. This provision is the first of several steps on the path to improving our elections.

"Well, the barriers are just to keep ineligible people from voting. Even one is too many." You know what's worse than one ineligible person voting? Even one person who is eligible but faces barriers that effectively deny them their right to vote is far worse than an ineligible vote being cast (which, statistically, is rare in any case[3]).

The idea of state-led voting was a nod to state sovereignty. The founding generation understood statehood very differently from how we do today. And it was in a time and place where everyone *knew* that voting was for white men with property. And the states, in most cases, did their best to preserve that exclusivity.[4]

Later, when blacks were enfranchised, many states, especially in the South, found ways to deny them the vote, nonetheless.

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[2] That's a poor translation of a quote from the **Tao Te Ching (*Daodejing*),** attributed to Lao-tzu (Laozi).
[3] *The Myth of Voter Fraud*, Justin Levitt (September 2007), **Brennan Center for Justice.**
[4] There are exceptions. In the 1790's, property requirements were often not enforced. And from 1776 to 1806, the voting requirements in New Jersey were gender-neutral.

That isn't who we *say*[5] we are anymore. Yet the powerful interests still want to keep "them" from voting. I reject that with my whole chest. Because even one qualified citizen without the opportunity to vote is one hundred too many.

> The timing, duration, and availability of polling for any federal special election must be materially the same as for regularly scheduled federal elections, including continuous access throughout the designated voting period.

The real changes in U.S. politics occur in two places. The first is party primaries. The second is special elections. That's because of gerrymandered districts. We'll talk about that in Section 2, but for now, let's make sure that it's equally easy to vote in a special election. No special, sneaky rules.

No reduced polling hours just because "special elections don't historically attract as many voters." That's entirely true. However, under this Charter, the availability of polls won't be the reason.

> In the event of extenuating circumstances, the Federal Election Commission may delay the election in a given region until the vote can be safely and fairly completed. Such a delay may not be for more than ten days, and once begun or resumed, must last in total for the full four days, with the same requirements for operating hours.

[5] What we say and what some states *do* aren't necessarily the same thing.

What if there's a fire, flood, or other unexpected event? The FEC can delay an election. But not for long. And when it *is* held, the access rules are reinstated.

***Article VI, Section 1.A.2. Staffing & Logistics***

> Staffing of polling locations shall be fulfilled through a Civic Lottery. This Civic Lottery will be overseen by the Federal Elections Commission, according to procedures established by Congress. Service as a poll worker in any capacity is considered a Civic Duty.

Our system struggles to find sufficient poll workers. That's simply a fact.[6] With the greatly expanded voting window this Charter requires, the need will be even greater..

The right to vote is the single most inherent characteristic of a democratic system. For that right to be exercised, someone has to work the polls. So, service at the polls should be considered a Civic Duty, just like jury service. Here, the Charter mandates exactly that. Election work is a Civic Duty that is randomly assigned.

> All operational, logistical, and security responsibilities for federal elections are vested in the Commission.

This is a significant change. In the past, states had the power and responsibility to decide how, when, and where elections were held within their borders, with Congress having the

[6] **Key facts about U.S. poll workers,** Rebecca Leppert, PEW RESEARCH CENTER (October 24, 2024).

power to override regulations.[7] This sentence changes that dynamic, because the responsibility for federal elections now rests squarely on the FEC.

"But, wait, Gary. The FEC is kind of partisan, isn't it?" The current FEC is supposed to be non-partisan. It isn't. In practice, it's extremely partisan. However, this Charter establishes it anew as a full and independent agency of the federal government. There will be more discussion about the FEC when we reach Article VI, Section 1.D.[8] Again, I ask you to reserve judgment until you've read the entire section, in its entirety.

> Each State, Territory, or Tribal land must designate local governments or agencies that are responsible for the on-the-ground conduct of elections. Local, State, and Tribal matters may appear on the ballots for federal elections.
>
> The Commission shall coordinate with those designated bodies to ensure compliance with uniform federal standards and procedures.

The conduct of the elections remains in the hands of local governments, as chosen by their states. However, they must coordinate with the Federal Elections Commission; they can't simply go rogue.

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[7] **Constitution of 1789,** Article I, Section 4, Clause 1: "The Times, Places and Manner of holding Elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators."

[8] *See* **National Charter of the United States** (unratified), Article VI, Section 1.D. Federal Elections Commission (FEC)

There is also explicit language allowing the states to piggyback on the federal ballot, just like they do today. I'm unaware of any time this has ever been a controversy, but this sentence prevents it from becoming one. Plus, it's just good common sense.

> The Territories, States, and Tribes shall designate polling locations, within guidelines set by the federal government, but the conduct of elections shall be a matter of uniform federal law.

This Charter preserves the states' ability to choose the "Places" and "Manner" of elections. And the "guidelines" they have to follow mirror the "Regulations" set by Congress under the Constitution of 1789.

> The Commission retains the power to request full federalization of elections in a region by petitioning the Federal District Court in whose jurisdiction the polls in question are located. The FEC must show clear and compelling evidence that elections are compromised, in danger of imminent compromise, or that local officials refuse to comply with federal standards for the conduct of elections. If so federalized, the FEC must use federal law enforcement for poll security and shall not rely on local law enforcement or security in that region.

"Government overreach!" It really isn't, though. Certain federal standards established by Congress must be followed. If the FEC determines there is a problem, they can *ask permission* from a judge, and they have to provide evidence that intervention is needed. If they convince the judge, they can federalize the election.

Even a cursory view of our history[9] will find instances of election manipulation. See the illustration I've included. Election fraud was so widely known in New York that Thomas Nast published this cartoon about it. What's the point of federal oversight if that oversight has no teeth? Suing someone, or even prosecuting them, after the fact doesn't restore the integrity of the election that was manipulated. This provision is designed to prevent harm,

[9] The infamous "Box 13" in the 1948 Senate race in Texas, interference by Tammany Hall, poll taxes, voter intimidation, and more are all examples of election manipulation in American history.

ensuring that the election doesn't become tainted or, at the very least, allowing for remediation before certification.

### *Article VI, Section 1.A.3. Poll Accessibility*

> There must be no barriers to the poll, such as, but not limited to, poll taxes, ancestral eligibility requirements, or any requirement that fails to provide reasonable accommodation for disabilities.

Our nation has a history of denying access to the polls.[10] Most of the time, that has been intentional. Sometimes it has been an unintended consequence. Regardless of intent, real people were robbed of their right to vote. That's simply unacceptable.

This passage bans barriers to voting with the full voice of constitutional language. That makes the ban immune to repeal through ordinary legislation. It also creates a constitutional standard for the Federal Elections Commission to enforce.

### *Article VI, Section 1.A.4. Absentee and Early Voting*

> The government must make provisions for absentee voting and must allow seven consecutive days of early voting at designated polls open for a minimum of twelve hours each day.

10 Limits to polling places, understaffed polls, voter intimidation at polls, grandfather clauses, poll taxes, and more have historically been used to limit access to polls. It isn't a neutral history. In almost every case, the barriers have been based on either race (Jim Crow restrictions) or religion (barriers intended to prevent Catholics, especially Irish Catholics, from voting).

Not only is the "regular" voting period four full days long,[11] but there must also be seven consecutive days of early voting, during which the polls are open 12 hours per day. That's a total of 144 hours during which a citizen can cast their vote. Because they must be consecutive days, two of the early-voting days will be on weekends.

The goal is accessibility.

***Article VI, Section 1.A.5. Required Governmental Burden***

> The convenience of government workers, the cost of administration, or historical practice may never be used as a justification to limit access to the vote. Any rule or policy that has the plausibly foreseeable effect of burdening the exercise of the Right to vote must be presumed invalid under this Charter.

This subsection implicitly concedes that administering an election is a burden. Then it says, in no uncertain terms, "Too bad. Do it properly, anyway."

It goes further. It sets up a two-part test, which, if failed, renders any rule or policy null and void. The two prongs are that the burden must be foreseeable and that the foreseeability has to be plausible. That's a pretty simple standard to apply. Notice that it doesn't say harm has to have occurred. In fact, "foreseeable" explicitly allows *preemptive* nullification. That's

[11] *See* **National Charter of the United States** (unratified), Article VI, Section 1.A.1. Timing and Access.

because a slap on the wrist or a fine *after* the election comes too late for the voters you've disenfranchised.

### *Article VI, Section 1.A.6. Acceptance Voting*

This is new to the federal elections landscape. We will discuss this more in the commentary for subsection A.8, but party primaries are abolished under this Charter. That means a lot of candidates on each ballot for each race. That's by design.

However, having many choices can lead to increased complexity in the form of runoffs and procedures for those runoffs. Acceptance voting eliminates the need for them. But since it's new, it's probably also unfamiliar. Let's walk through this carefully.

> Except for Senate races,

Senate races don't (automatically) use acceptance voting. That's because it is up to the individual states and the Tribal Council to decide how they choose their senators.[12]

> Federal elections for public office will use acceptance voting.

That's the mandate. It isn't an authorization or a suggestion; it is a requirement.

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[12] *See* **National Charter of the United States** (unratified), Article II, Section 6.B.1(a). States *and* Article II, Section 6.B.1(c). Tribal Senators.

For each contest, voters may vote for any number of candidates they find acceptable, including none or all.

Here is how voters interact with the ballot. They decide which candidates (if any) they are willing to accept, and they mark all of them.

Each candidate who is accepted receives one vote from that ballot.

Every candidate who gets accepted on a ballot receives a vote. That means Jane Roe might vote for several candidates, because she's ok with all of them. Billy Bob Toolbox might only vote for one candidate. And Alex Ambi may choose not to vote for any candidates. All of Jane's and Billy Bob's votes get counted, and nothing is untoward about Alex's no-vote (it isn't considered an "undervote").

The candidate receiving the most total votes shall be declared the winner.

Every vote is counted. Every vote. All three of Jane's votes get counted. Whichever candidate receives the most votes is the winner. Do you see how this eliminates the need for both primaries *and* runoffs? There's simply no need to limit the field of candidates.

Why is this beneficial? It's simple. Today, lots of voters end up voting for the "lesser of two evils." They don't really mean that the way it sounds. What they often (though not always) mean is that *their* preferred candidate never got a chance to appear on the ballot. Or because there was a crowded field, their candidate got eliminated before a runoff.

“But what about ranked-choice voting?” That’s a solid question. It was my original choice. But ranked-choice is harder to tabulate, and it opens the door to second-guessing.

“Oh, well, I voted for John Boy, but that was before I knew the runoff would be between him and Mary Ellen.”

Acceptance voting is clean. You accepted them, or you didn’t.

And it’s fast. Ranked-choice requires multiple rounds of tabulation. Acceptance voting is done in one pass.

***Article VI, Section 1.A.7. Procedures for Close Margins***

> If an election results in a tie, or if the margin of victory is within 1% of the total votes cast, the Federal Elections Commission shall conduct a single, transparent, and publicly auditable recount.

This single sentence has a lot of words. They aren’t fluff.

The first two phrases establish a trigger: either a tie or a result with a margin less than 1% of the total votes cast. These are unambiguous and easily measurable.

The second half of the sentence explains what happens if the trigger trips:

**Who:** The Federal Elections Commission

**What:** A full recount

**How:** The recount has to be transparent and publicly auditable

> If a tie exists after the recount, the winner shall be determined by lot. In such a case, each tied candidate shall draw a number from one to one hundred, and the candidate with the highest number shall be declared the winner.

So, what happens if there is a tie after the recount? Simple. Resolve the election by drawing lots. Why does it say "each tied candidate?" Because it is theoretically possible (though extremely unlikely) that there would be more than two tied candidates (because it is acceptance voting).

> No additional recounts may be held on the basis of a close result.

There's only one recount. This precludes the ever-expanding litigation we saw around the 2000 Florida recounts. What it doesn't do is preclude other remedies, including recounts for reasons *other* than a close margin.[13]

> Referendums will have a straight up-or-down vote. Referendums shall have no tie-breaker, and the referendum shall be ruled unresolved.

The rules for referendums are far simpler. A tie is just a "scratch." That is, the matter under consideration is undecided.

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[13] *For an example, see* **National Charter of the United States** (unratified), Article VI, Section 1.B.4. Automatic Audit.

***Article VI, Section 1.A.8. Open Choice***

Primaries, caucuses, nominating contests, or other mechanisms limiting who may appear on a ballot are prohibited. All eligible candidates qualify independently, as provided by this Charter.

*"It is, indeed, little else than a name, where the government is too feeble to withstand the enterprises of faction, to confine each member of the society within the limits prescribed by the laws, and to maintain all in the secure and tranquil enjoyment of the rights of person and property."* — George Washington, in his farewell address

*"Among the numerous advantages promised by a well constructed union, none deserves to be more accurately developed than its tendency to break and control the violence of faction....By a faction, I understand a number of citizens...who are united and actuated by some common impulse of passion, or of interest...."* — James Madison, **The Federalist, Number 10**

*"There is nothing I dread So much, as a Division of the Republick into two great Parties, each arranged under its Leader, and concerting Measures in opposition to each other. This, in my humble Apprehension is to be dreaded as the greatest political Evil, under our Constitution."* — John Adams, **Letter to Jonathan Jackson, October 2, 1780**

Primaries and nominating caucuses (and whatever new machination someone could dream up besides those two) serve only party power. What's worse, they attract mostly the most extreme membership of those parties. Having done so, they divide our people by

preselecting candidates who are more virulently opposed to each other than We the People are, ourselves.

Washington's farewell address, which I quoted above, seems as though he looked into the future to describe our present day. To say that isn't flattering is charitable.

This subsection puts primaries where they belong: on the putrid, smoldering, dungheap of political rot and ruin.

***Article VI, Section 1.A.9. Campaign Season***

> Campaign season is defined as the one hundred eighty (180) days before a Federal Election. During campaign season, provably false political speech is unprotected, as provided in Article I, Section 2.B.2($ab_1$)

Today, in the U.S., our politicians never stop campaigning. Never. Their reelection campaign begins the day after they are elected. That's not hyperbole; it's fact. Some of that is unbreakable. It's just who we've become, and I'm not so arrogant that I believe I can stop that with a little bit of ink on some paper.

But the American people, in general, hate it. The most common refrain in the last couple of weeks before an election is, "I can't wait for this election to be over." We hear it at work. We say it to friends. People call in to radio shows to express it.

And it doesn't have to be that way. Other advanced democracies manage to have free and vigorous elections without extended campaign seasons. We can too.

This passage defines the campaign season. It also triggers the limit on political lying that is explicitly carved out in the Freedom of Speech and Expression subclause[14] of the Charter. It even provides a cross-reference citation to be clear about its intent – lying any time within 180 days before an election for political purposes isn't protected speech.

"What!? Lying in an election is as American as baseball and apple pie!"

Yeah, but it shouldn't be.

Voters need to be able to trust that the information they receive during campaign season is accurate. Limiting speech to only honesty during the 180 days before an election is the lesser evil when compared to the harms of misinformation and disinformation.

If you want to lie some other time or on any other subject, it says a lot about your character, but you may be my guest.

> Candidates may begin gathering petition signatures or fulfilling other ballot qualification requirements at any time allowed by law. A candidacy is considered "declared" when the candidate or their designated representative files the required signatures with the Federal Elections Commission. Signatures must be submitted no earlier than one year and no later than one hundred eighty days before the election.

[14] *See* **National Charter of the United States** (unratified), Article I, Section 2.B.2($ab_1$). Unprotected Categories, *which discusses forms of speech that are not protected speech, including*: "2. Deliberate falsehoods causing demonstrable harm, including reckless disregard for truth in contexts where accuracy is legally required, including political speech during the one hundred eighty (180) day period before an election...."

This passage is procedural. It defines when candidacy officially begins. I don't have any explanatory notes or persuasive quips for it because it doesn't need any.

**Article VI, Section 1.B. Balloting Integrity and Verification Process**

***Article VI, Section 1.B.1. Physical Ballots and Ballot Verification***

> All votes shall be cast on physical, voter-marked ballots, either at an official polling location or by authorized absentee ballot.
>
> Voter-marked means either directly marked by a voter or, in the case of a disabled voter, marked by a designated assistant in accordance with the voter's direction.

There's no reasonable way to misinterpret these two sentences. Both in-person and absentee voting require a physical ballot.

The second sentence's definition is a guardrail against bad-faith interpretations that would disenfranchise disabled people. I hate that this kind of language has to be included, but I'm not naïve—at least not *that* naïve.

So why a physical ballot? It's the twenty-first century.

Three words: "It was rigged."

A transparent, auditable, physical recount goes a long way toward resolving that kind of allegation.

Article VI, Section 1.B.1(a). Absentee Voting

> Absentee ballots must be accepted and counted, provided they are postmarked before Election Day and received no later than five (5) days after the election.

In today's voting landscape, there is a wide disparity in the timing of when absentee ballots must arrive to be considered valid and countable. Thirty-one states, plus the Northern Mariana Islands and Puerto Rico, require ballots to arrive by Election Day. Louisiana requires that they arrive the day *before* Election Day. Finally, 18 states, plus Guam, require a postmark by Election Day, with various deadlines for final receipt.[15]

That patchwork is fine for state or territorial elections; there's a uniform rule for the whole jurisdiction, whatever that jurisdiction may look like. But for Federal Elections, this is creating chaos, confusion, and fuel for conspiracy theories (without any provable basis, so far) of vote tampering.

This sets a unified standard that the entire nation operates under.

"Five days? Is that long enough?" Honestly? I don't know. But I do know there must be a finite end, and there must be time to count the absentee ballots before certification. While automated counting can speed things up, the nature of absentee voting means that some legitimate ballots will arrive wrinkled or creased, and machines traditionally struggle with

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[15] *See* "Table 11: Receipt and Postmark Deadlines for Absentee/Mail Ballots," **Voting Outside the Polling Place: Absentee, All-Mail and Other Voting at Home Options,** NATIONAL CONFERENCE OF STATE LEGISLATURES, https://www.ncsl.org/elections-and-campaigns/table-11-receipt-and-postmark-deadlines-for-absentee-mail-ballots, last visited by the commentary author in November 2025.

reading such forms. That being the case, the Charter's affirmative command that absentee ballots be counted means at least some of them will require hand counting. That's just a practical fact.

> No excuse shall be required to cast an absentee ballot, but the voter must request such a ballot in order to receive one. Congress may establish reasonable requirements to verify voter eligibility prior to issuing an official absentee ballot.

Twenty-eight states allow no-excuse absentee voting. Another eight conduct "all-mail" elections, sending ballots to every eligible voter.[16] Again, this patchwork is okay at the state level, but it's unreasonable at the national level. There needs to be a uniform standard.

The question, then, is whether voters should need an excuse to request an absentee ballot, or whether they should even have to do so.

Donald J. Trump, Ivanka Trump, Jared Kushner, Kayleigh McEnanny, Ron DeSantis, Marco Rubio, Ruth Bader Ginsburg, Sandra Day O'Connor, Kerry Washington, Leonardo DiCaprio, Oprah Winfrey, Taylor Swift, Dick Cheney, Barack Obama, Joe Biden, Mike Pence, and George W. Bush have all voted absentee. Some—remarkably—have done so even while publicly questioning the validity of absentee voting.[17] That says everything that needs to be

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[16] *See* "Table 1: States with No-Excuse Absentee Voting," **Voting Outside the Polling Place: Absentee, All-Mail and Other Voting at Home Options,** NATIONAL CONFERENCE OF STATE LEGISLATURES. https://www.ncsl.org/elections-and-campaigns/table-1-states-with-no-excuse-absentee-voting, last visited by the commentary author in November 2025.

[17] Note that I said "some." Not all, not even most, of the people listed here are guilty of that behavior.

said about whether this is a reasonable *form* of voting. Their use of it affirms that they believe it's legitimate. Any argument to the contrary by any of them is bad-faith hypocrisy.

What about the so-called "all-mail" election? It's an idea that gets bandied about in some circles. That's a more nuanced question. It assumes that voting officials will correctly and proactively identify every single voter in their jurisdiction. It's better to rely on the voter to request the ballot.

> Absentee ballots must be presumed valid unless affirmatively proven otherwise, via court challenge at the challenger's expense or submission by election officials to the Federal Elections Commission for challenge in court.

This is a big change. In some states, there are requirements for signature matching. Other states have other requirements. Whether intended or not, the effect of these requirements has been to discard votes cast in good faith. Real people have had their votes annulled. This language requires a vote to be accepted unless it can be proven to be fraudulent. That's why Congress is empowered to establish verification procedures prior to ballot issuance.

There are two pathways to prove fraud, both involving the courts.

The first is that a concerned citizen *could* challenge, at their own expense. There's always someone who says, "I saw a purple alien mail an absentee ballot." OK. Put your literal money where your mouth is, Shorty.

The second pathway exists when election officials believe a ballot is fraudulent. This is likely the more common pathway. Those officials can submit the ballot to the FEC, which may then file suit to challenge its validity.

If neither of those pathways leads to success, the ballot is counted. Period.

> Congress must enact regulations to ensure absentee ballots are resistant to counterfeiting.

This is the final requirement on absentee balloting, and it is an important one. A critic can easily (and reasonably) ask, "What keeps someone from printing their own ballots and mailing them in?"

This is the guardrail. Congress is required (note the word "must") to establish anti-counterfeiting measures for absentee ballots, just like it does for currency.

Article VI, Section 1.B.1(b). In-Person Voting

> In-person voters shall mark their ballots using a system that confirms machine readability and produces a printed ballot for voter verification. The printed ballot shall serve as the official, auditable record for any recount or manual audit.

There is a lot left to statute here, but two points are chiseled into the constitutional stone.

First, the system used must confirm that the ballot can be read by the machine that will be used for tallying the votes. In 2000, the U.S. learned the vocabulary of electoral failure—

dimpled, pregnant, and hanging chads—because punch-card ballots weren't reliably machine-readable. In 2016, ballots in Los Angeles County weren't printed precisely enough, and the optical scanners misread or rejected them. In 2021, a similar issue caused the barcodes on the ballots to be unreadable in Nassau County, NY. In 2022, at least 70 of 223 polling places had ballot printers that used ink too light for the tabulators to read.

In every one of those examples, a process that ensured machine-readability at the time of voting would have either eliminated or significantly reduced its impact. Would it have slowed voting? Sure. A little. But the votes would have been recorded, and confidence in the process would have been preserved.

Second, the Charter commands that a printed ballot be retained as the official record. If and when a recount is done, it's the printed ballot that is reviewed. If an after-the-fact audit is done, it is the printed ballot that is reviewed.

> Before submitting the ballot to election officials, the voter may review the printed copy. If they identify any discrepancy or error, they must be allowed to spoil it and complete a corrected ballot in its place.

The voter also gets a verification step with the printed ballot. They can review it and request the opportunity to spoil the ballot and revote to correct any errors or discrepancies, on the spot. Most voters probably won't bother. They'll mindlessly take their ballot, maintaining the weird graveyard reverence that we all seem to adopt at the poll, and turn it in as directed. It doesn't matter how many people take advantage of the opportunity

to correct a problem. What matters is that they can. That's what preserves confidence in the system.

***Article VI, Section 1.B.2. Physical Record***

> The printed ballot shall be deposited into a secure, tamper-resistant container to serve as the legal and auditable record of the vote. No vote shall be considered valid or official unless its physical ballot is retained and secured in this manner.

Recounts happen. Challenges to poll integrity arise. These are facts. Those facts may *feel* distasteful. They shouldn't. They are signals that the system works as intended.

When these things happen, how do we resolve them? That's the real question, the real point of friction.

A physical record helps prove the vote tally is correct and that election workers handled ballots properly during voting. The bottom line is this: no matter how the votes are *counted*, a secure paper trail records the individual ballots.

> Spoiled ballots must be marked with the word "Spoiled" written in ink in large letters across the face of the ballot and deposited in a separate, secure, tamper-resistant container. They must be retained for as long as the official ballots are in existence for accountability and audit purposes.

In Article VI, Section 1.B.1(b), we discussed how voters have the opportunity to verify the paper ballot matches their intent. If there are mistakes or discrepancies, they can spoil their ballot and re-vote. But what happens to those spoiled ballots?

We keep them, but they are separated from the active ballots.

This does two things: it clearly denotes the ballot as spoiled, so that it can't easily be confused with a valid one, and it mandates that even spoiled ballots are retained and subject to audit.

"O.K., I get why you want them clearly marked. But why do you need to keep them for audits?" I don't know. And that's the point.

I don't (and can't) know what issues might arise in any challenge to an election's results. But evidence that has been destroyed or disposed of can't be used to reconstruct a clear picture of what happened. A spoiled ballot could be that evidence. So, we retain those ballots.

Each ballot shall be assigned a unique, non-personally-identifiable tracking code. This code shall be recorded by the scanning machine and included in the electronic record. During any audit or recount, election officials must be able to verify that each physical ballot corresponds exactly to its recorded digital interpretation, ensuring full traceability without compromising ballot secrecy.

Ballot integrity is a big deal, and that's what this provision is about. But ballot integrity *can* come at the cost of ballot secrecy.

That tradeoff is often exaggerated, but this provision precludes it entirely. Yes, the ballot is individually identifiable, but the identification is tied to the *ballot,* not to the voter.

You can still tell Grandma that you voted for her favorite politician while really voting for the person who is replacing them. Nobody will know.

***Article VI, Section 1.B.3. Open Scrutiny***

> All software used to scan, tally, or report votes must be fully open-source and the final revision publicly available for inspection no later than one hundred eighty (180) days before any election in which it is used.

Americans deserve to know their vote will be accurately counted, and that the tabulation software is free from bugs or manipulation. That seems basic.

This provision serves that end. By requiring open-source software and a six-month review window before the election, there is ample opportunity to detect and correct errors, backdoors, or exploits, whether those are accidental or deliberate.

> The Federal Elections Commission shall maintain a reference copy of all code that meets this requirement. Private vendors may supply hardware or software only if every line of code they deploy is equally open-source and subject to public scrutiny.

We have become a suspicious society. When questions arise about code tampering, the FEC will have the tools to verify whether the software deployed matches the software that was reviewed and approved.

> If a credible threat to voting integrity is successfully raised in federal court at any time after the proposed final revision is submitted, the court must issue a waiver to allow the development of new software on an emergency basis. The resulting code still must be open-source and available for public review.

The obvious question, then, is what happens if a problem is found within the 180-day lockdown period? This provision addresses that. The flaw is taken to court for review. If found credible, the court issues a waiver, allowing the problem to be resolved. However, even the resolution must be open and transparent. That prevents a two-step Trojan horse, where an error is deliberately introduced into the code as an excuse to tamper with it after the deadline.

***Article VI, Section 1.B.4. Automatic Audit***

> After every election, at least two percent (2%) of precincts in each county, rounded up to the next whole precinct, and randomly selected by the Federal Elections Commission, shall be hand-counted to verify machine accuracy; if discrepancies exceed one-half of one percent (0.5%) or could change the outcome of any race in that precinct, all precincts in the county, parish, or similar jurisdiction must immediately be hand-counted.
>
> For the purposes of this provision, "county" means a county, parish, or other similar local political division.

How can we have confidence in our elections? Simple. We audit them.

OK, that makes sense. What happens when we find meaningful discrepancies?

We force a hand recount of the entire county. Why? Because:

1. That's the usual level of election administration
2. That's traditionally the level where election fraud and election incompetence have occurred

Given those factors, it makes sense to double-check the whole county.

## Article VI, Section 1.C. Assisted Voting Guarantee

### *Article VI, Section 1.C.1. Authorization for Assistance*

> Any voter who requires assistance to mark or cast a ballot may do so with a person of their choosing or, if unavailable, with a sworn election worker, provided that the assistant acts solely at the voter's direction and maintains the secrecy of the ballot, as provided in Article VI, Section 1.B.1.

Not everyone can read. Not everyone can operate a keyboard or touchscreen. But if they're citizens, they still have the right to vote. This segment of the Charter expands on the earlier passage, which defined what "voter-marked" means.[18] It explicitly authorizes that assistance and designates who can provide it.

Disabled voters can choose an assistant. If they don't, they can receive assistance from an election worker. The only restrictions are that they must follow the voter's instructions and must never disclose how the person voted.

Why is this in the Charter? Unfortunately, systemic, intentional disenfranchisement exists. This eliminates a known vector.

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[18] *See* **National Charter of the United States, Article VI, Section 1.B.1** (unratified): "Voter-marked means either directly marked by a voter or, in the case of a disabled voter, marked by a designated assistant in accordance with the voter's direction."

There are all kinds of edge cases that this protection could expose around vote brokering, familial or other coercion, and so on. Every single one of those can be resolved in statute without abandoning this core protection.

***Article VI, Section 1.C.2. Mandate to Provide Assistance***

> If a Citizen is legally able to vote but requires assistance to do so and has no designated assistant, the government must provide one to them if the voter wishes to vote in person.
>
> Government-provided assistance need only extend to reading the ballot aloud in English, assistance with marking the ballot, and assistance with mobility or adaptations to compensate for a lack of mobility. More comprehensive assistance may be provided, but only as provided for by Federal or State law.

This works in conjunction with the clause before it. Where Section 1.C.1 *allows* assistance, this one *requires* it if the voter asks and has no designated assistant.

The principle, by this point, should be clear: disability can't be allowed to prevent an otherwise qualified citizen from voting.

One thing to note is that this text doesn't require the government to assist in absentee voting. It only applies to in-person voting. That's because an absentee voter presumably has enough assistance to ask for a ballot and return it. If they have that much help available to them, surely they can ask for and receive any assistance they need to actually vote. It's

unreasonable to expect the government to send someone to their home (or wherever) to help them vote when they have demonstrated a support system.

There are limits, though. A poll worker is not expected to translate a ballot into Romansh, for example. They only have to make sure that the ballot is physically accessible, understandable in English, and that the voter can mark it.

If Congress or the state wants to demand more assistance, the Charter allows for that, but it doesn't mandate it.

**Article VI, Section 1.D. Federal Elections Commission (FEC)**

> There shall be a Federal Elections Commission, which must be a permanent agency, independent from any branch of government. The Commission shall be responsible for overseeing and enforcing the provisions of this Charter related to the timing, conduct, financing, speech, and integrity of federal elections.

Under our current system, there is a small, independent agency called the Federal Elections Commission. It consists of six appointees, all of whom are appointed by the President. No more than three can be from the same party. It has a small administrative staff and is characterized by complete gridlock due to party entrenchment. That last bit is ironic, since the requirement that no more than three commissioners be from the same party was intended to *prevent* partisanship.

So, why in the Sam Hill am I enshrining a Federal Elections Commission into this Charter?

This isn't your father's FEC. It differs in leadership, compensation, specified duties, and scope and is built for effectiveness, not partisan peacekeeping.

The passage opens a longer section on the FEC's structure, duties, and authority. What this passage does is enshrine the existence of the Federal Elections Commission into constitutional language. Why? Because many of the provisions surrounding federal elections depend on the FEC.[19]

It can't simply be implied or locked in merely by statute.

***Article VI, Section 1.D.1. Citizenship Requirement***

> All Officials and employees of the Federal Elections Commission, including the Commissioner and Vice-Commissioners, must be Citizens of the United States.

In any democratic system, including a republic, voting is the linchpin of the entire system. Everything else depends on the vote. Who gets to vote? How? When? What do they vote about? The answers to those questions literally define the system of government. Since that's the case, voters need to have absolute confidence in the people who oversee elections.

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[19] The FEC handles the Civic Lottery that staffs the polls (**National Charter of the United States** (unratified), Article VI, Section 1.A.2. Staffing & Logistics). It is responsible for verifying the signatures required to get on the ballot as a candidate (**Ibid.,** Article VI, Section 1.A.8. Open Choice). It is the agency responsible for election audits (**Ibid.,**

Article VI, Section 1.B.4. Automatic Audit). There's more, but the point is made.

While it doesn't logically follow that 1) all citizens act in good faith, or 2) noncitizens should automatically be suspect, humans aren't governed by logic. We are governed by gut feeling. And for many, allowing noncitizens access to the regulation and conduct of elections would likely produce feelings of anxiety and distrust. That reason alone justifies this requirement. And the requirement applies to every single person in the FEC, from the floor sweeper to the Commissioner.

***Article VI, Section 1.D.2. Neutrality Requirement***

> As a condition of employment or office, all Officials and employees of the FEC must remain publicly neutral in all matters regarding the conduct of elections and the application of Charter law, statutes, and regulations. This should not be construed to nullify their Right to vote.

I hope the reasons for this clause are obvious. Just in case they aren't, bias or the appearance of bias by a referee makes the outcome of the game questionable. Anyone who watches the Big Three (American football, baseball, or basketball) is intimately acquainted with claims of corrupt officiating. This is precisely the same in principle, although far more important (sorry, sports fans).

The last sentence isn't a throwaway, though. Without it, a hyper-literal reading of the text might lead to an interpretation that FEC workers wouldn't retain their right to vote (since voting is, by definition, not a neutral act). The important thing is that they do not put their

thumb on the scale. They're still allowed to hold and exercise their political opinions, privately.

> No Official or employee of the Federal Elections Commission may be a member of or act with intent to benefit any political party.

This, on the other hand, *is* an explicit ban. They can't belong to a political party. With the elimination of primaries and other nominating contests,[20] this isn't a huge burden to ask them to carry. Again, it's about both the appearance and reality of neutrality.

### *Article VI, Section 1.D.3. Leadership and Compensation*

Article VI, Section 1.D.3(a). The Commissioner of Federal Elections

#### *Article VI, Section 1.D.3($a_1$). Term of the Commissioner*

> The Commissioner of Federal Elections shall lead the FEC and will serve a single, non-renewable term of six (6) years. Regardless of whether their predecessor left office at the end of their term or before, each Commissioner serves a full term, commencing on the first working day following their confirmation.

This establishes the office of the Commissioner of Federal Elections and sets their term. It's pretty straightforward. This term limit's a little different from others in this Charter. The

[20] *See* **National Charter of the United States** (unratified), Article VI, Section 1.A.8. Open Choice.

Commissioner's term is a full six years, regardless of whether their predecessor finished their term or not.

The reason I didn't introduce a lot of complexity, as I have for federal judges and elected officials, is that there isn't a compelling reason to limit durations. Federal judgeships rotate on a schedule. Elected officials have term limits to keep them grounded. Here, the term limit is designed to prevent fief-building. It doesn't matter when the term starts. What matters is that it ends.

*Article VI, Section 1.D.3($a_2$). Appointment of the Commissioner*

> The Vice President, Leader of the Senate, and Speaker of the House must, at all times, maintain a list of no fewer than five and no more than ten candidates for appointment to the office of Commissioner. Two votes of the three are sufficient to add or remove an individual to or from the list of candidates.

We can't have the FEC without a leader. "Acting" this and "interim" that don't have the same inherent authority as appropriately appointed and confirmed officials. As I said in the introduction to this section, voting is the linchpin of any democratic system. The individual responsible for ensuring elections are free and fair under this Charter is the Commissioner. Why would we wait to vet candidates until a vacancy arises? That would be stupid. No, we always need to have a ready list of vetted candidates.

This passage ensures that we do just that. It requires the leaders of each house of Congress and the Vice President to collectively maintain that list at all times.

> When a vacancy occurs, the President must nominate one of these candidates no later than ten (10) days after the Office shall become vacant. The Senate must hold a confirmation vote within thirty (30) days of the nomination. A majority of voting Senators shall be sufficient to confirm. If the nominee is not confirmed, the President must submit another nominee within ten (10) days. This process shall repeat until a Commissioner is confirmed.

I've already pointed out that the current version of the FEC is badly deficient. It's grossly partisan. A byproduct of that partisanship is that there are frequently unfilled vacancies.

Think about that. There are unfilled vacancies in the body responsible for ensuring free and fair elections.

Unfilled vacancies.

Are you kidding me? That's completely unacceptable.

This passage requires the President to appoint a new Commissioner when a vacancy arises. There are deadlines for both the President and the Senate. If the nominee fails confirmation, the process restarts, still with deadlines in place.

None of this is optional. The word "must" appears multiple times to compel urgency.

Article VI, Section 1.D.3(b). The Vice Commissioners of Federal Elections for the States

> Each State or Territory shall have a Vice Commissioner of Federal Elections. Vice Commissioners serve as the Commissioner's designated deputy and carry out oversight of Federal elections within that State or Territory. There shall also be a single Vice Commissioner for the combined Territories of the United States. The Commissioner may request the dismissal of any Vice Commissioner at their pleasure; however, dismissal must be ratified by a majority vote in the Senate.

Here is where the Commission really begins to differ from what we have now. Instead of a tiny board of six members that's permanently gridlocked, we have a firm leadership structure of appointed officials. The Commissioner can fire their Vice Commissioners, but they must convince a majority of the Senate to approve the firing.

> Each Vice Commissioner shall have a staff funded by Congress of sufficient size and scope to carry out the duties of the Commission in the State.

Don't be fooled; this isn't a throwaway. While there is deliberate flexibility in the way this is worded ("sufficient size and scope"), the *intent* is clear enough to be litigable: Congress has an affirmative duty to fund the FEC's offices in each state and territory. The "what does that look like" is open to debate and interpretation, but there can be no argument about the constitutional duty.

*Article VI, Section 1.D.3($b_1$). Term of Vice Commissioners*

> Each Vice Commissioner shall serve a three-year term, renewable twice.

Vice Commissioners serve shorter terms than the Commissioner, but their term is limited differently. Where the Commissioner serves a six-year, non-renewable term, Vice Commissioners can serve, theoretically, up to nine years (one 3-year term, plus two extensions). This preserves continuity in senior leadership, but with some flexibility.

> The term of a Vice Commissioner begins on the first workday following their confirmation by the Senate. Renewed terms begin automatically on the first business day after the prior term ends. A term is only renewed if the Commissioner issues a written statement before the previous term ends.

And here's the flexibility piece. Yes, a Vice Commissioner's term is renewable, but that renewal isn't automatic. The Commissioner has to state that they want to renew it. If a new Commissioner comes into office, doesn't think a particular Vice Commissioner should be *fired*, but would prefer someone else, they appoint a new person when the term is up.

*Article VI, Section 1.D.3($b_2$). Appointment of Vice Commissioners*

> The Commissioner of Federal Elections shall nominate each Vice Commissioner. Each nominee must be confirmed by a simple majority vote in the Senate. Appointments must be made within ten (10) days of a vacancy. The

> Senate must vote within thirty (30) days of any nomination. The Commissioner may renew terms without requiring an additional confirmation vote.

So, how do the Vice Commissioners get appointed? Did I just drop 50+ more appointments onto the Resolute Desk? No. Only the Commissioner is appointed by the President. The Vice Commissioners serve as deputies to the Commissioner, so the Commissioner makes the nominations. But the nominees still require Senate confirmation. There are also deadlines. I've already railed in previous commentary about the appalling vacancies that plague the current FEC. Those vacancies are not a part of this framework.

***Article VI, Section 1.D.4. Duties and Powers of the Federal Elections Commission***

So, we know who the lead players are, but what does the Federal Elections Commission *do*?

Article VI, Section 1.D.4(a). Administration of Federal Elections

> The Federal Elections Commission is responsible for administering federal elections. This includes, but is not limited to, verifying signatures for petitions and submissions of candidacy, coordinating with States regarding voting equipment and maintenance procedures, ensuring uniform standards, and promoting good-faith collaboration with the States to provide appropriate voting locations for elections.

Its first role is administrative. Put simply, its job is to make sure elections run fairly, accurately, and smoothly. They coordinate with the county agencies that do the work. They're a resource for the counties in a lot of ways.

Why does this matter? Well, think about what really goes into running an election. What happens if the absentee ballots aren't correctly verified before being issued? Who counts and verifies the signatures for petitions of candidacy? What happens if the damned voting machines break down? What happens if the ballot box won't lock? Those are nitpicky, apparently dumb questions, but every one of them needs a precise answer, or the election becomes chaos.

Article VI, Section 1.D.4(b). Oversight of Elections

This is the next major category of the FEC's duties and powers: it oversees elections.

> The Federal Elections Commission shall have primary oversight of all federal elections, and designated State agencies shall assist.

And here's the thesis. Notice that the Charter acknowledges the involvement of state agencies, but names the Commission as the lead. This is a big change from the Constitution of 1789, which granted oversight of elections to the states.[21] However, even at the Philadelphia Convention, there was concern that some states might act unfairly, so they gave Congress the power to regulate elections (except for Senatorial elections, which were handled differently in the early republic).[22]

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[21] *See* **Constitution of 1789,** Article 1, Section 4: "The Times Places and Manner of holding Elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof...."

[22] **Ibid.,** "...but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators." (Don't blame me for the spelling. Spelling wasn't fully standardized at that time, and Gouverneur Morris, the principal draftsman of the 1789 Constitution, spelled "choose" as "chuse.")

In the 230+ years since ratifying the Constitution of 1789, history has shown that the Founders' fears were justified. I won't rehash that history here; I trust that you've read and understand it. That history is real, and it isn't in the distant past. So, the Charter transfers most of that authority from the states to the FEC.

> Whenever a State election occurs concurrently with a federal election, the Federal Elections Commission shall exercise combined oversight. In such cases, all election workers shall be drawn from the Civic Lottery, and all costs related to the administration of that election shall be paid in full by the Federal Government through the Commission.

This is an incentive for states to coordinate their elections with federal elections. If they do, they don't foot the bill.

> States may enact and enforce rules governing their own elections. Any such rules must not conflict with the provisions of this Charter or hinder the integrity or conduct of the federal election in any way.

Here, the Charter preserves state control over their own elections. All it asks is that the states conform to the requirements of the Charter. In other words, "You can do what you want in your own elections, states. Just don't try to disenfranchise people."

Article VI, Section 1.D.4(c). Statute Enforcement

> The Federal Elections Commission shall also be responsible for enforcing all Charter provisions and federal statutes related to the conduct, integrity, financing, and regulation of elections. Enforced statutes must be consistent with this Charter.

And finally, on the (hopefully) rare occasions when they are needed, here's where the Charter bares its teeth. The FEC has the power to hold individuals and the government accountable. It's broad power, but tailored. The Commission can enforce any matter related to elections, but only if it is *directly related* to elections. It isn't a whole new police force. In fact, it's not a police force at all. It is a Commission whose final responsibility is the enforcement of election law.

> The Federal Elections Commission shall have full investigative authority to enforce election law. It may compel testimony or documents only upon judicial warrant based on probable cause, which must describe the particular violation being investigated with specificity.

And, true to the Charter's pattern, here are the limits. Even with its broad authority and discretion, the Federal Elections Commission can't just do whatever it wants. It is still subject to the same rules as any other part of the government.

> Upon finding of wrongdoing, the Commission may refer the matter to the appropriate Executive agency for criminal investigation, if warranted. The FEC may initiate civil proceedings for violations that are not criminal in nature.

So what happens if the FEC finds a violation? This passage spells it out: criminal infractions are referred to the executive branch (probably the Department of Justice), and civil matters are litigated by the Commission itself.

> When making a referral, the Commission must forward all documents and testimony with the referral. No evidence may be held back.

Now, this probably seems like an obvious statement. But governments of all levels are notorious for withholding potentially exculpatory evidence. The sole purpose of this pair of sentences is to shut the gate on that kind of behavior.

Article VI, Section 1.D.4(d). Legislative Oversight

> Congress may exercise legislative oversight over the conduct of the Federal Elections Commission.

"The FEC has an awful lot of power. And the Charter makes them independent from any branch of government. That means they can act without any oversight."

Wrong. The Commission has independent, but bounded, power and is subject to Congressional oversight, just like any other government agency.

The Statute Enforcement subclause[23] put limits on the FEC's investigative power. The Leadership Clause for the Commissioner and Vice Commissioners described their selection and the length of their term.[24] The Citizenship Requirement and Neutrality Requirement clauses established safeguards against bias and even the appearance of foreign influence.[25] And finally, this subclause says that Congress has oversight.

This isn't a rogue, unaccountable agency.

## Article VI, Section 1.E. Standing to Challenge

### *Article VI, Section 1.E.1. General Provisions*

Article VI, Section 1.E.1(a). Investiture

> Any declared candidate for federal office shall have standing to bring a civil action in a Federal District Court against one or more other candidates in the same race for violations of federal election law.

A candidate can sue for relief when campaign violations occur. It isn't a criminal prosecution; it's a civil action seeking relief. The scope of their standing is limited to their own race, so Greg Monk, who is running for governor, can't score political points by filing suit against Alexandria Agraviada, a Representative from an entirely different state (<sarcasm> not that something like that would *ever* happen </sarcasm>).

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[23] *See* **National Charter of the United States** (unratified), Article VI, Section 1.D.4(c). Statute Enforcement.
[24] **Ibid.,** Article VI, Section 1.D.3. Leadership and Compensation.
[25] **Ibid.,** Article VI, Section 1.D.1. Citizenship Requirement *and* Article VI, Section 1.D.2. Neutrality Requirement.

> The Federal Elections Commission shall have standing to bring a civil action in a Federal District Court against any party or parties for violations of federal election law in any election.

The FEC also has standing to bring suits, but it can do so for violations in any election. The reason for the broader standing should be obvious. They oversee all elections, so they need to be able to seek remedies in all elections.

> Other individuals or groups may potentially have standing as otherwise provided for in Article IV.

This is a defensive statement. This section grants civil standing in election matters to candidates and the FEC. But what about an individual citizen who has been harmed? This sentence is their shield. It prevents an official from arguing that a citizen lacks standing just because they aren't listed here. If the harm they want to relieve meets the standing requirements in Article IV, they still have standing.[26]

Article VI, Section 1.E.1(b). Materiality

> In any suit brought, the alleged violation must be material and:
>
> 1. Must have occurred or have produced an effect during the current or most recent campaign season, or

[26] *See* **National Charter of the United States** (unratified), Article IV, Section 4 – Standing.

2. Be plausibly expected to occur, based on observable conditions, regulations, or behavior, in the current or a future campaign season.

A violation must be considered material if it could plausibly affect the outcome of the election or elections in question, or abridge the fair exercise of Rights by voters or other candidates. The court must determine materiality based on the totality of circumstances, including the timing, scale, and nature of the violation.

This defines what counts as an actionable harm that creates standing for a candidate or the FEC.

First, it includes the word "material," which we will discuss in a moment, because it is defined a few lines down.

Second, it lists two conditions. If either of those conditions is met, the general circumstances exist for generating standing.

The first condition is that the violation must have occurred (that's easy enough to understand) *or have produced an effect* (a little trickier) during the current or most recent campaign season.[27] So, what does "or have produced an effect" mean? This means that if someone, such as the local county clerk, took action at any point and that action has a

[27] Campaign season is defined as the 180 days immediately prior to the election. (*See* **Ibid.,** (unratified), Article VI, Section 1.A.9. Campaign Season.)

continuing effect that reaches into this campaign season, that policy action still meets the bar.

The second condition is preemptive. If it isn't far-fetched to believe that a policy or behavior will be material, then it generates standing. Let's use a ridiculous example to illustrate this.

Wanda, the Secretary of State of the Great State of Toenail, has introduced a requirement that only people whose left toenail has been surgically removed will be allowed access to the polls. Now the State of Toenail is so named because most people *have* had their left big toenail removed, so this has never been a problem. In fact, Wanda implemented that policy in 1937, and it has never been challenged, despite being obviously unconstitutional. In practice, nobody really checks the toenail status of voters; it was a bit of silliness when she put it in place. But here we are in 2025, and the State of Toenail has seen a lot of immigration from the State of Earring. Native Toenailians don't really like the general attitudes of Earringans, and there's a lot of cultural pushback. An Earringan-friendly candidate could sue because the toenail removal restriction *could plausibly* be invoked at the polling place. Some election workers who didn't like Earringans might decide to start checking the toenail status of voters. That's plausible. Likely? Not really. But plausible. And if you're the Earringan whose voting access is denied, you don't care that it wasn't likely; you care that you were denied the ability to exercise your vote. That's what the second condition is designed to protect against.

So, we have our two conditions. If either one is true, the violation may generate standing. But is it "material?" What does that even mean?

In this context, the Charter defines it to mean that a violation must plausibly affect the outcome (plausible—not definite or likely—just plausible), or must infringe upon the rights of voters or candidates.

So, a regulation banning cell phone use wouldn't meet that bar. There is nothing about the act of voting that requires access to a cell phone. Sure, it can be convenient to look things up on your phone, but it isn't necessary for voting. So there's no plausible harm.

However, what if there were a rule that, to vote, the citizen had to purchase and wear a particular outfit? That would clearly generate standing. Why? It's plausible that the dress code in this example would prevent some from being able to vote because they can't afford to buy it (after all, it's really just a sartorial poll tax).

Now, it's important to note that *standing* doesn't mean the plaintiff won. It just means they get to walk into the courthouse. They still have to prove their case.

***Article VI, Section 1.E.2. Procedure***

> Claims must be brought within thirty (30) days of discovery of the violation, but no later than seven (7) days before the election unless the violation occurred within that period.

This is a clear boundary for the timing of challenges. The seven-day cutoff prevents finish-line chaos,[28] and the "unless the violation occurred within that period" phrase closes the door on any zone of impunity.

What it's saying, in plain language, is this: Bring your complaints early; don't wait until right before the election. If something new happens right before the election, fine, but all the other stuff? Bring it when it happens. It's common sense.

> Court rulings should generally be issued within seventy-two (72) hours of filing, unless exceptional circumstances justify a delay.

Courts can't dawdle. We're talking about elections. Will that result in rushed decisions? Absolutely, it will, in some cases. That isn't good. What's worse is letting a problem persist into an election in the name of judicial thoroughness. Doctors make split-second decisions to save lives every day. Some of those decisions are ultimately the wrong ones, and the doctor would have chosen otherwise, given more time. But no one would seriously argue they should let the patient die while they gather *all* the evidence and make the perfect decision. Why do we pretend judges are different? The republic is their patient, and sometimes they have to make the hard call in the moment, knowing they may be wrong.

[28] Which, since the last few decades of American history have left me cynical, I could see a bad actor doing on purpose, as part of some subversive action. Sorry to be Negative Nellie, but what I've seen is what I've seen.

> Appeals of election-related rulings must be heard and decided within seventy-two (72) hours of filing.

Appeals are also urgent. The same logic applies.

***Article VI, Section 1.E.3. Relief***

All of that is great, but what can a court *do* about it?

> If the court finds, by clear and convincing evidence, that a material violation occurred, it may issue appropriate relief: injunctive orders, monetary penalties as authorized by law,

This seems like a reasonable list, so far. The court can *stop* behavior (issue injunctions) or impose civil fines where the law allows it. That's pretty boilerplate.

> disqualification of the offending candidate,

Wait...what? That's right. The Charter gives a judge the ability to disqualify a candidate for misconduct.

"But...unelected judges...."

Yeah, I know. We all like to rail against the unelected judges.[29] But here's the thing (and it's true *every* time that strawman is brought up, not just here): judges don't get to just...intervene...whenever they want. Someone has to bring a case. And their decisions are subject to appeal.

> or nullification of the election result, consistent with this Charter.

"Are you serious!?" Yeah. I am. Maybe the process is so tainted that confidence in the whole election is now thrown into doubt. Are the American people just supposed to shrug and say, "Oh, well. Nothing to be done about it?"

Hell. No.

But there are limits, even here. It says "consistent with this Charter." And here's where it says what is consistent:

[29] At least until they rule in our favor, then they're "appropriately independent."

`Any such nullification shall be limited to the race and jurisdiction in which the violation occurred and shall not affect unrelated contests on the same ballot or future candidacy. In the event of nullification, a new special election must be held within ninety (90) days of the judgment, to include the original referendum or candidates as the first, less any candidates disqualified by the judgment. If nullification and a subsequent special election could change the outcome of a nationwide race, a randomly selected Senator who is otherwise qualified for the office shall take office as scheduled and hold the Office as caretaker until the special election is certified.

"...Limited to the race and jurisdiction...." If the race for Representative is tainted, *only* that race is nullified; the Presidential race on the same ballot is unaffected (unless it is tainted, too, of course). And the jurisdiction is essential for the Presidential and Vice Presidential races. Think about the Florida recounts in 2000. If the Supreme Court had had access to this tool, it could have nullified the election in just Palm Beach, Miami-Dade, Broward, and Volusia Counties, instead of being forced to issue a ruling that decided the election nationwide.[30]

"...a new special election must be held...." The people's voice will be heard. It isn't optional, and a 90-day time limit has been established. Unambiguous.

[30] Some may doubt whether that court would have used this tool, if available. I'm not among them; I think the court desperately wanted an off-ramp, but couldn't find one.

“If nullification...could change the outcome of a nationwide race....” We’re obviously talking about the President or the Vice President here. This matters. On January 20, a randomly selected Senator takes the office of President and serves until the special election is certified. There *will* be a President. It can’t be the sitting President because they could game the system to subvert the election system entirely by ensuring every election is tainted. That’s how you get monarchs and dictators.

Finally, I want to circle back to something, because it may be confusing. The language says that nullification “shall not affect...future candidacy.” Then, a few lines later, it says, “less any candidates disqualified by the judgment.”

If this isn’t read carefully, it may seem like a contradiction. It isn’t one. What the passage is saying is that nullification, in and of itself, can’t disqualify a candidate or bar them from future office.

But judges do have the explicitly stated authority to disqualify a candidate for violations. So, a judge could rule that a particular candidate acted so egregiously that they should be disqualified. Still, that candidate also tainted the election so severely that it needs to be nullified and a special election held in its place. This is an edge case, but it is plausible.

**Article VI, Section 1.F. Campaign Financing**

“Get the money out of politics.”

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I had to let that one breathe. It sounds like a rant. Hell, it *is* a rant.

But it is a justified one.

This isn't an afterthought; it was front-and-center in my mind when I began this project. By now, it should be clear that the equality of all people, regardless of our differences, is *the* guiding light running through this Charter, keeping its course true.

But I mean real equality, not "some...are more equal than others."[31] If the wealthy, or well-funded special interests, are allowed to "speak" more loudly than the ordinary person, they are "more equal" in practice. That's going to happen in popular media. Way more people care what Lady Gaga thinks about perfume than they do about my opinion on the same issue.

In the political arena, though, that is corrosive.

***Article VI, Section 1.F.1. Definitions***

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|---|
| The following definitions shall apply to all laws regarding Campaign Financing. |

[31] **Animal Farm,** George Orwell (Harvill Secker, 1945). The full quote, which is relevant to my point, is "All animals are equal, but some animals are more equal than others." The original rule, when the animals overthrew the farm, was, "All animals are equal." But the pigs revised the rule to include the qualification that some (specifically, the pigs) were 'more equal' than others.

Campaign Finance always invites litigation. Even though the Charter includes a Glossary, this subsection defines some terms here, so that no one can later pretend they don't mean what they mean. Technically, the Glossary is *part* of the Charter, so any definition listed there should be binding, but courtroom arguments sometimes belong in their own silly season. This binds these particular definitions, unassailably, as part of the Charter's text.

Article VI, Section 1.F.1(a). Candidate

> A Candidate is defined as a Citizen who is running for any Office of trust, whether at the Federal, State, or Local level.

There isn't a lot of wiggle room here. If you're a citizen running for elected office in the United States, you are a candidate. The one thing worth calling out is that this definition explicitly applies to *all* levels of government, not just candidates for federal office.

Article VI, Section 1.F.1(b). Referendum

> A referendum is any matter of direct democracy appearing on a ballot, whether at the Federal, State, or Local level.

Proposition.

Ballot initiative.

Proposed amendment.

Ballot measure.

Recall vote.

Whatever euphemistic name a jurisdiction throws on it, any exercise of direct democracy is a referendum. And again, that's at every level of government.

In other words, any time a question is resolved at the ballot box instead of by Congress or another part of the government, it's a referendum.

Article VI, Section 1.F.1(c). Campaign

> A Campaign is defined as any and all efforts, beyond an individual Citizen's vote, designed to influence the outcome of an election through communication, organization, expenditure, or deployment of resources.

Anything that is done to elect or oppose a candidate is a campaign. The same logic applies to referendums: anything done to promote or oppose ratification is a campaign.

This definition applies even when there is no direct coordination with a Campaign Organization. Not only is coordination not required, but *knowledge* of the behavior isn't even required.

The only exception in either case is that your individual vote is not considered part of a campaign. That's because, logically, it is part of the *outcome* of that campaign.

> This definition applies to efforts by Campaign Organizations, as well as to other actors working toward or opposing those ends.

"Campaign Organizations" get defined next, so hang on for that. But this passage says the definition of a campaign applies not only to them but also to any other person or entity whose behavior meets that definition. This is important. A PAC or Super-PAC *is* waging a campaign if it speaks on an election-related matter. The definition doesn't require knowledge or coordination. It simply defines a set of behaviors as campaigning.

> It does not encompass private musings or discussions that are not intended for the general public.

This is designed to protect *potential* candidates from bad-faith actors. If you have a falling out with your toxic old uncle, he can't use a private conversation over the Thanksgiving turkey against you. Maybe you mused about running for office. Heck, maybe you even said you were trying to figure out how to get the signatures to declare your candidacy. If you said it in private, he can't say you were campaigning.

> A Campaign is considered concluded when a Candidate withdraws their Candidacy or thirty days after the election is concluded and final.

Some things in the Universe may be eternal. Campaigns aren't among them.

Article VI, Section 1.F.1(d). Campaign Organization

Remember how I said we'd get to the definition? Here it is, but there are actually two definitions, depending on whether we are talking about campaigns for office or campaigns surrounding a referendum.

For a Candidate, a Campaign Organization is the Association, directly led by the Candidate or their appointed Campaign Manager, for the purpose of conducting and coordinating a Campaign for Office.

Currently, we use the word "campaign" to mean both the apparatus a candidate puts in place to run for office *and* the coordinated effort to achieve a victory. The Charter distinguishes between the two concepts. Why? Even though "Campaign Organization" is a mouthful, it clearly means an organization, not a set of behaviors. With this definition, when we say campaign, the Charter definition is the activity, while the Campaign Organization is the candidate's apparatus that wages the campaign.

For Referendums, a Campaign Organization is defined as the Association responsible for submitting a petition for amendment or the body specified in this Charter responsible for submitting a Referendum. If an individual Person submits a petition for amendment, the Campaign Organization shall be the Association directly led by that Person or another Person whom they designate.

Since a referendum is just an idea, it can't hire a campaign manager, right? This passage clarifies how a Campaign Organization is defined for a referendum and who the principal behind it is.

Campaign Organizations, though they are Associations, are exempt from the requirements in this Charter that limit political speech by Associations. That

> exemption lasts only for as long as the Campaign. No Candidate or Referendum may operate or benefit from more than one Campaign Organization.

Elsewhere in this Charter, Associations are subject to limitations. In Article I, they are stripped of constitutional rights.[32] The two clauses that follow this one limit their ability to make political contributions.[33] That would seem to hamstring Campaign Organizations. They wouldn't be able to do anything! This language exempts them from these limitations, *but only for the duration of the campaign.*

Article VI, Section 1.F.1(e). Campaign Donations

> Campaign donations are defined as financial consideration, materials, property, or infrastructure provided for the purpose of conducting a Campaign, as defined in this Charter. Independent political expenditures are included in this definition.

This definition does substantial work.

1. It defines donations, including non-monetary donations.
2. It specifies the *activity* it supports, not the Campaign Organization it is supporting or opposing. That's huge. It means that giving to a PAC can't be considered anything other than a Campaign Donation if the donation gets used in campaigning, *regardless* of whether it goes directly to a Campaign Organization.
3. It reinforces that "campaign" is to be defined as spelled out in the Charter.
4. Finally, it is explicit that independent expenditures are included in the definition. No hedging behind, "I just bought an ad myself, supporting my favored candidate." That's still a donation.

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[32] *See* **National Charter of the United States** (unratified), Article I, Section 2.B.1(b). Associations.
[33] *See* **Ibid.,** Article VI, Section 1.F.2. Financing of Campaigns for Office**,** *and* Article VI, Section 1.F.3. Funding of Referendum Campaigns.

Article VI, Section 1.F.1(f). Funding Period

> The Funding Period is the defined period of time during which Campaign Donations may be solicited and received.

This is straightforward. There is a limited slice of time when value can change hands for the purposes of campaigning.

***Article VI, Section 1.F.2. Financing of Campaigns for Office***

Article VI, Section 1.F.2(a). Limits to Filing Fees

> Congress may impose filing fees for seeking Office. Those fees, including all such fees in aggregate, may not exceed one-third ($^1/_3$) of the median personal income according to the most recent decennial census. No other authority, agency, Office, or body is authorized to impose additional financial burdens on the declaration of candidacy.

Yes, there can be filing fees required to declare candidacy for office. They're kind of dumb in this day and age, but whatever. No, they can't be prohibitive. Using 2021 census data,[34] the limit would be $11,935.

Article VI, Section 1.F.2(b). Limits to Campaign Donations

> There shall be a limit on the value of Campaign Donations permitted from individuals during any given Campaign Season for the purpose of electing or defeating Candidates.

[34] **U.S. Census Bureau, U.S. Department of Commerce.** *Current Population Survey, 2021 Annual Social and Economic Supplement (ASEC): PINC-01. Selected Characteristics of People 15 Years and Over, by Total Money Income, Age, Race, Hispanic Origin, and Sex* (2021). The current decennial census doesn't gather income data (that would change under this Charter). The American Community Survey (ACS) wasn't released for 2020 due to pandemic disruptions.

Voluntary Donations of time and labor by the individual making the Donation are exempt from these limits. These Donations are also not bound by the provisions of Article VI, Section 1.F.4

This limit is cumulative across all donations and candidates in the same Campaign Season.

The limit shall be equal to one-fourth ($^1/_4$) of the median personal income in the United States, according to the most recent decennial census, per donor in aggregate across all Campaigns.

"The American people don't back finance reform."

Almost three-quarters of Americans polled in 2023 said there should be limits on what individuals and organizations can spend on elections.[35]

Eight in ten Americans said that people who make large donations are too influential on members of Congress.[36]

[35] *7 Facts about Americans' views of money in politics,* Andy Cerda and Andrew Daniller, PEW RESEARCH CENTER, (2023). https://www.pewresearch.org/short-reads/2023/10/23/7-facts-about-americans-views-of-money-in-politics, last visited by the commentary author in November of 2025.
[36] Ibid.

Seventy-nine percent of Americans surveyed mere weeks before I am writing this commentary said that they strongly or somewhat agree that, "Large independent expenditures by wealthy donors and corporations in elections give rise to corruption, or the appearance of corruption."[37]

Seventy-three percent either strongly or somewhat agreed that, "If a wealthy donor or corporation gains influence over or access to an elected official, I consider that official to be corrupt."[38]

Anyone who tells you that Americans don't support reform is lying to you. Ask yourself why, and how that lie benefits them.

In any case, this passage locks in a cap on donations. It is linked to median personal income. That automatically scales it over time but keeps it limited. The purpose isn't to stop political giving; it is to equalize it. A billionaire, under this requirement, can't give more to candidate *X* than I can.

"But wait, there's more!"

The billionaire also can't give to dozens of candidates, even though I can only afford to support one or two. Why not? The limit is aggregated across *all campaigns* in a given cycle.

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[37] *Most Americans see unlimited election spending as a threat to democracy: poll,* David Levinthal, OpenSecrets, (October 28, 2025), https://www.opensecrets.org/news/2025/10/most-americans-see-unlimited-election-spending-as-a-threat-to-democracy-poll, last visited by the commentary author in November of 2025.
[38] Ibid.

And if you want to go knock doors without being paid for it, which is super-duper common, that doesn't count. Go sunburn your head pounding the pavement to your heart's content.

Article VI, Section 1.F.2(c). Aggregations and Donations Through Associations

> Associations may collect, use, and spend Campaign Donations, including the aggregation of Campaign Donations on members' behalf. The Campaign Donations so collected must be kept in a discrete fund, and any Campaigning is limited to the use or expenditure of the funds in that discrete fund. General funds, membership dues, Association fees, and the like are barred from use for this purpose.

Say you belong to Americans United for Wilted Salads (AUWS). You pay them dues, plus fees. That money can't be used in campaigns. On the other hand, you can send a donation earmarked for campaign spending, which they *can* use under very controlled conditions. You can work with other like-minded lovers of salad to ensure the candidate with the best bacon grease policy gets elected. But the donation counts against your limit, and it's technically just a pass-through from you to whatever campaign activity AUWS spends it on.

> Except for Campaign Organizations, Associations may not incur debt to finance Campaign activity. Associations enjoy no entitlement to political expression in their own right. They may do so only when aggregating and passing through Campaign Donations as outlined here.

"I know how I'll get around it. I'll rack up a bunch of debt to spend on campaigning, then after the election, I'll raise money to retire debt, instead of declaring it as political spending. I'm a genius!"

Nope.

Article VI, Section 1.F.2(d). Self-Funding Candidacies

> Any Candidate may contribute an amount less than or equal in value to the ninety-eighth percentile of personal income from the last decennial census to their own Campaign.

A rich person can run. They can exceed the usual caps on giving to their own campaign. But they're still limited to about half-a-million dollars (that's not exact). That's enough to *start* a campaign, but not enough to *buy* an office.

Article VI, Section 1.F.2(e). Issue Advocacy

> Whether in the confines of Campaign Season or not, issue advocacy by individuals is protected speech. Issue Advocacy by Associations of any kind is restricted to members-only forums and member education. Campaign Donations may not be used for this purpose.
>
> Issue Advocacy ceases to be Advocacy and becomes Campaign activity any time a reasonable person can infer endorsement or rejection of a Candidate or Referendum.

You know what this is talking about. Scary music in a minor key. Black and white, jittery pictures, and flashing lights. A frightening voice-over.

And in another fifteen minutes, your show will get interrupted to show you the same thing all over again.

There are limits on that now.

***Article VI, Section 1.F.3. Funding of Referendum Campaigns***

> Any Person or Association may make unlimited donations regarding Referendums, but all donations are made to an Account devoted to the Referendum. The Account shall be administered by the Federal Elections Commission. Funds shall be dispersed in equal amounts to sub-Accounts dedicated to For and Against the Referendum (one Account each). Campaigns may request funds from one or the other account, subject to audit and reporting requirements developed by the FEC for proper use of funds dispersed.

This one's simple. Anyone can give, and in any amount, during a referendum campaign. But they can only support the *debate*, not a side.

The Campaign Organization or any opposing group can request funds for one side or the other, but the funds are divided equally.

I wish I had more to say on this one, but it really is that simple: You can contribute to the debate, not to the outcome.

***Article VI, Section 1.F.4. Funding Period and Transparency***

> Campaign Donations may only be solicited or received during the Funding Period beginning twenty days prior to the start of Campaign Season, as defined in Article VI, Section 1.A.9 of this Charter, and until thirty days following final resolution of an election.

There isn't a universally recognized percentage of time that members of Congress currently spend fundraising, but depending on who you ask, the range is somewhere between 30% and 50%.

That's insane.

This provision shuts all of that down. Campaign donations are limited to a period of twenty days before the campaign season[39] until thirty days after the election is concluded.

"Why go outside of campaign season at all, Gary?" The answer lies in practical logistics. Campaigns might ask for donations to help with a filing fee, or to start a blitz on day one. After the election, they need to tie up loose ends and pay the last few bills. It's about nothing more complicated than that.

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[39] *See* **National Charter of the United States** (unratified), Article VI, Section 1.A.9. Campaign Season: "Campaign season is defined as the one hundred eighty (180) days before a Federal Election."

All Campaign Donations must be reported to the Federal Elections Commission and shall be a matter of public record, including the Persons or Associations making the Donation.

Campaign Donations shall be reported on the first day of each month, and any Donation received within the previous month must be reported. Receipt is defined as the act of a Campaign Organization taking possession either of the funds, goods, or other Donations or of the instrument of their transfer.

No. Secret. Donations.

No weird accounting tricks.

Just report what you got, who gave it to you, when you took possession of it, and how much it was worth.

## Article VI, Section 2 – Redistricting

This is a major issue. In an August 2025 poll by YouGov, 75% of adult U.S. citizens responded that gerrymandering[1] is a major problem.[2] That same study found 74% of adults believe it should be illegal to gerrymander on the basis of race, and 69% believe it should be illegal even when the purpose is merely partisan.[3] It also found that a 49% plurality (compared to 30% unsure and 21% against) would prefer independent commissions to draw congressional districts, rather than their state legislatures.

Just in case you think that poll is an outlier, another poll conducted in October 2025 found similar results.[4] In yet another poll, Common Cause echoed those findings, along with showing that most Americans oppose mid-decade redistricting.[5] That's important because the Constitution of 1789 only requires redistricting once per decade,[6] but imposes no ban on mid-decade redistricting.

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[1] Just in case you need a reminder, according to Merriam-Webster, gerrymandering is "the practice of dividing or arranging a territorial unit into election districts in a way that gives one political party an unfair advantage in elections." (https://www.merriam-webster.com/diction/ary/gerrymandering, last visited by the commentary author in November 2025) It has been a persistent phenomenon throughout American history.

[2] *Large majorities of Americans say gerrymandering is a major problem, unfair, and should be illegal,* Alexander Rossell Hayes, YouGov (August 8, 2025), https://today.yougov.com/politics/articles/52740-large-majorities-americans-say-gerrymandering-major-problem-unfair-should-be-illegal-redistricting-texas-callifornia-poll, last visited by the commentary author in November 2025).

[3] That's an important distinction because in *Rucho v. Common Cause,* **Volume 588, United States Reports,** opinion begins on page 684 (2019), the Supreme Court held that mere political advantage is a political question that can't be reviewed by the federal courts (remember *Marbury v. Madison*, from our earlier discussions in Articles I and II?). As long as it's purely partisan, that removes judicial review from the picture, no matter how badly one side or the other cheats.

[4] *Poll: 82% of Americans Want Redistricting Done by Independent Commission, Not Politicians,* Shawn Griffiths, The Fulcrum (October 6, 2025), https://thefulcrum.us/governance-legislation/americans-want-redistricting-done-independent-commission-not-politicians, last visited by the commentary author in November 2025.

[5] *Poll Shows Mid-Decade Redistricting Unpopular with Republicans, Independents*, Common Cause (September 10, 2025), https://www.commoncause.org/indiana/press/poll-shows-mid-decade-redistricting-unpopular-with-republicans-independents, last visited by the commentary author in November 2025.

[6] *See* **Constitution of 1789**, Amendment 14, Section 2: "Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed." (Note, this is the currently operative language, which replaced the so-called "Great Compromise" language from Article I.) *See also* **Ibid.,** Article I, Section 2, Clause

Nonetheless, we've seen examples of mid-decade redistricting in Texas, California, and elsewhere. As of 2025, the politicians aren't even *pretending* anymore. They blatantly say they're doing it to gain an advantage or cancel out the other side's gains.

I think I'm on pretty solid ground when I say that partisan/racial gerrymandering is a significant problem, and that it needs to be addressed.

**Article VI, Section 2.A. Redistricting Frequency**

> Congressional and District Court districts shall be redrawn every ten years, in the odd-numbered year following the publication of the national census. No State, commission, or other authority may redraw or revise congressional or court districts at any other time.

This directly addresses one of the problems I identified in the introduction to this Section: when and how often are congressional districts redrawn? This clause states it cleanly. Every ten years. Period. No more, no less. Doesn't matter who's doing it or why.

**Article VI, Section 2.B. Redistricting Commission Selection**

> Independent commissions shall draw Congressional District maps.

3: The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct."

That addresses the other big issue raised in the introductory commentary. This is great! But who are the commissioners? How are they selected?

> Each redistricting commission shall consist of seven (7) members selected via Civic Lottery from among the registered voters of the State, and an equal number of alternates shall be selected in the same manner.

They're just regular people. Seven of them, with seven more alternates. Drawn from the citizens of the state.

Who they *are* isn't as important as who they *aren't*.

- They aren't politicians
- They aren't members of the chattering class
- They aren't academic or legal elites

None of those classes of people is inherently bad (no matter what some might say). But they don't really represent ordinary citizens. Since it depends on random selection, the Commission may include one of them, but it will mostly be just ordinary citizens. That is, the Commission will be composed of folks who are directly *affected by the laws and taxes* that their Representatives enact.

What if they don't want to serve?

> Service as a commissioner or alternate is a compulsory Civic Duty. Refusal to serve, unless excused through the judicial screening process or other excusal authorized by this Charter, shall constitute a failure to fulfill Civic Duty.

It's a required Civic Duty. So, if they don't show up or flatly refuse, that counts as an instance of Failure to Fulfill a Civic Duty.[7] They can be excused for cause, just like with any other Civic Duty.[8]

> If an alternate is activated to the Commission, excused, removed, or becomes incapable of serving, a replacement shall be selected by Civic Lottery from the same pool of eligible Citizens.

Obviously, if a Commissioner can't finish their work, an alternate replaces them. That's self-evident. But what happens when there aren't seven alternates anymore? There's a new Civic Lottery to replace the lost alternate(s).

> Commissioners and alternates must be selected by June 30 in each census year.

This is just procedural work to ensure that the panel will be in place when the time comes for the Commission to begin its work.

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[7] *See* **National Charter of the United States** (unratified) Article I, Section 2.C.1(b). Enforcement of Civic Duty *and* **Ibid.,** Article IV, Section 7.C. Failure to Fulfill a Civic Duty**.**

[8] *See* **Ibid.,** Article I, Section 2.C.1. Grounds for Excusal from Civic Duty**.**

**Article VI, Section 2.C. Redistricting Standards and Priorities**

Congressional and court districts shall be drawn according to the following order of priority:

1. Equal Population. Districts shall be drawn to achieve as equal in size as possible, based on population.
2. Geographic Compactness. Geographic compactness shall be measured by how closely a district's shape maintains a uniform distance from its center to its outer boundary. Districts should resemble basic geometric forms, such as circles or squares, except where irregular shapes are necessary to achieve population equality, respect political boundaries, or accommodate geographic features.

How do you decide what's essential for drawing congressional districts? We can't really look to the Founders. They lived in a different world and embraced values we find immoral today.

- The 1790 census showed a total population of 3,893,635 persons.[9] By way of contrast, my home county, Harris County, Texas, returned a population of 4,835,125 in the 2020 census.[10]
- Today, we count every person for congressional representation.[11] Some want to count only citizens. In 1787, they chose to count "the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons."[12] That was a moral failure. Any time we start making fractions out of people, we've lost our way.

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[9] **United States Census Bureau, "**Return of the Whole Number of Persons within the Several Districts of the United States," 1st Census, 1790. I couldn't find the entire report on the National Archives website; however, digital images of the report are available at https://archive.org/details/returnofwholenum0000unit/page/n1/mode/2up. The summary appears on page 3.

[10] According to https://censusreporter.org/profiles/05000US48201-harris-county-tx, which I visited on November 15, 2025. I was unable to pull data directly from the Census Bureau because their website was "experiencing slowness and intermittent response," according to a banner on all of their webpages. That was also on November 15, 2025. The data I am using, while likely accurate, is *not* the official number. I believe it sufficiently makes my point, however. I hope that the current government resolves the records retrieval problem promptly, so that, as Americans, we have access to our data.

[11] *See* **Constitution of 1789,** Amendment XIV, Section 2.

[12] *See* **Ibid.,** Article I, Section 2, Clause 3.

- After the 1790 census, there were about 30,000 people per Representative. Today, that number is around 780,000 per Representative. If we had retained the founding era ratio, the House of Representatives would number around 11,000 members.

No, an appeal to historical authority won't serve us well, here.

With that out the window, what do we want to accomplish? I set out to write a simple guideline that:

- As much as possible, make congressional districts equal in population, and
- Do away with nonsensically-shaped districts designed to favor one candidate or group over another.

That's what this provision does. It gives the Commission a clear set of measurable guidelines, in priority order, to work with. Let's unpack it. I'm going to use some headers, just to keep the thinking organized.

**Communities of Interest**

If you're politically engaged (which I'm guessing that you are, if you've read this far), you may be wondering about "communities of interest," because this provision doesn't mention them.

The idea behind them is that we shouldn't break apart historically distinct communities with a shared history and set of interests. This has been an especially important consideration for people of color, because their communities have been split apart in redistricting battles in the past, to dilute their votes and deny them representation. That history is real and ongoing. For that reason, I originally considered including them in the

redistricting process. They really go a long way toward preventing the splitting of communities (often called “cracking”).

But the more I thought about it and looked into it, the more I began to see another side to them. Not the whole “reverse racism” argument; that’s a strawman. No, what I saw was how “communities of interest” get used to “pack” certain groups together in ways that limit their representation. The infamous “fajita strip” in Texas (Texas’s 25th Congressional District from 2003 to 2006) is a good example of this. It was a long, thin district that captures Latinos in McAllen, skirts San Antonio, then snakes up to Austin. For context, it takes over four-and-a-half hours to (legally[13]) drive from one end of that district to the other. It only takes about an hour to drive across it. No reasonable person could look at a map and think the shape of that district made any sense at all. The courts agreed, and the map was redrawn.

But that last sentence highlights a problem. The courts struck that map because of the Voting Rights Act, specifically Section 2. The district diluted minority representation by packing those Latinos into a single district, when they could have impacted their *local* communities more, had they been appropriately districted. That’s the whole issue, here. Unfortunately, Section 5 of the Voting Rights Act was gutted in the decision for *Shelby*

[13] Don’t come for me, fellow Texans. I know you “can make it in...” whatever time you say.

*County v. Holder* (2013).[14] That makes Section 2 much more difficult to enforce. The court case that protected Latinos in 2006 wouldn't be able to make that finding today.

The challenge I faced was that, while I recognize that districts have been drawn to exclude or minimize representation for specific groups or to maximize representation for others, the concept of "communities of interest" is too vague to be practical. It can serve as a shield, but it can also be used as a cudgel. I chose, instead, to focus on empirically measurable criteria.

**Equal Representation**

The first guideline that *does* appear, and therefore the highest priority one,[15] is equal population. The Charter settles on a sweet spot of approximately 550,000 people per congressional district.[16] Why? That's clearly less accountable than the Founders had in mind. However, as I noted, that ratio would result in a House of Representatives larger than the population of many small towns. The answer is practical and straightforward. We optimize for the threshold for a territory to be admitted as a state.[17] A territory under this Charter is required to achieve a population of 550,000 permanent residents before it can begin the statehood process.

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[14] See *Shelby County v. Holder,* **Volume 570, United States Reports,** opinion begins on page 529. Apparently, according to the Court, America has changed, and racism isn't a problem anymore.

[15] We had a long discussion on the Founders, then on communities of interest. You may have lost track of the fact that the Charter text says, "Congressional and court districts shall be drawn according to the following order of priority...."

[16] This figure is calculated based on the apportionment of Representatives in Article II. (*See* **National Charter of the United States** (unratified), Article II, Section 5.B. Apportionment.)

[17] *See* **National Charter of the United States** (unratified), Article V, Section 5.A. Admission to Statehood.

## Geographic Compactness

We talked about the "fajita strip." That's just one example of any number of ridiculous districts. We can generally solve both the "cracking" and "packing" problems by mandating geographic compactness. But, while the *concept* is simple enough, how do you measure it? That's where things have historically gotten sticky, and where they still are. The Charter assigns a definition: "...Compactness shall be measured by how closely a district's shape maintains a uniform distance from its center to its outer boundary." That can be measured. It doesn't require absolute uniformity of distance (that would be a perfect circle), but it is measurable and comparable to other alternatives. And, it allows for the inescapables: geographic features and political boundaries. It also provides for irregular shapes to accommodate population equality (which, as I noted, is the higher priority).

## Democratic Proximity

Can you imagine what it would be like to have a Representative for every 30,000 people? That's roughly the ratio the Founders enjoyed. Today's districts, measured by population, are 26 times the size of the districts of the founding era. That's mind-boggling. We've lost a lot in terms of Representative responsiveness due to our nation's growth.

This Charter establishes subdistricts within each district, each with a Local Delegate to help overcome this problem.[18] But how do we determine how to draw the subdistricts?

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[18] *See* **Ibid.,** (unratified), Article II, Section 8 – Local Engagement With Congress.

3. Congressional Subdistricts shall follow the same rubric, except that the population of each district shall be divided by fifty-five thousand (55,000), discarding any remainders to determine the number of Subdistricts in a given District.

This sentence answers that question. We do it the same way we draw congressional districts, except the population thresholds are smaller. That's all. There's no reason to complicate it further.

**Article VI, Section 2.D. Commission Transparency**

Each redistricting commission shall publish a summary of each meeting, vote, or formal consultation within forty-eight (48) hours. A complete account of all other documents, minutes, deliberations, et cetera, must be published with reasonable promptness, but also with due care for accessibility and clarity.

This is a procedural requirement. It's rooted in the principle of democratic transparency. Even under the Constitution of 1789, congressional district lines have *a heavy impact on* everyday Americans. Under this Charter, that's even more pronounced: they determine where the courts are, they determine where subdistricts are, and so on. Given that they are that important, the American people have an affirmative right, even beyond the principle of citizen sovereignty, to know what is being done and said in commission meetings.

There are two parts to this. The first requirement is that the commission must publish a summary of its meetings within forty-eight hours. This isn't a full set of minutes, and it doesn't have to include everything. It's just a summary.

The second part provides a more detailed account of each meeting, including all relevant details. The publication window is defined more broadly. It must be "reasonably prompt," but it permits adding alt text to images, ensuring screen reader compatibility, and so on.

**Article VI, Section 2.E. Commission Procedures**

This subsection has several elements. Let's take those one at a time.

> Each commission must meet at least once a week, beginning January 2, until final maps are submitted, either in person or via a secure virtual conference. A majority of commissioners will constitute a quorum. Alternates are required to attend all meetings.

This establishes when the Commission's work begins, how often they meet, and how many Commissioners are required for a quorum. The essential parts of this passage to highlight are that meetings can occur virtually, and that Alternates are required to attend.

In a state like Rhode Island, there may be little to no need for virtual meetings. The state is small enough in physical size to allow most people to travel to an in-person meeting. However, in states like Alaska, Montana, or Texas, traveling to a meeting, especially every week, would be a significant burden. Virtual meetings make the requirement sustainable.

Alternates need to attend because they can, at any time, be called upon to step up and become full Commissioners. Whenever that happens (and it surely will), the interests of the Commission are best served if that person is already fully up to speed on the progress of the Commission. Otherwise, valuable time will be lost in recap.

The Federal Elections Commission must provide administrative support to each Redistricting Commission.

At their core, congressional districts are about representation and the voting process. Representatives literally "represent" the votes of the citizens in the House. The Federal Elections Commission's core function is based on voting. Furthermore, each state has a Vice Commissioner on the FEC, accompanied by enough staff to support the Redistricting Commission in its work.

Redistricting commissions have the power to request expert consultation on subjects relating to redistricting.

Commissioners are just regular folks. They might be schoolteachers, pipefitters, street sweepers - who knows? It's doubtful that many of them will have extensive knowledge on subjects related to redistricting. This provision empowers them to enlist experts to aid them in their work.

> Final maps must be submitted to the Provincial Court by the end of the calendar year. Extensions may be requested from the Provincial Court for exceptional circumstances, but, if granted, all other deadlines remain unchanged.

Here's their deadline. They have a year to complete their work (technically, they have a year minus one day, but that's close enough). When they're done, they send their map to the Provincial Court for their state to be reviewed.

What if there is an apocalypse that prevents the Commission from finishing on time? They can ask the court for more time, but the language requires that it be caused by "exceptional circumstances." What that means is left to the court, but it certainly *doesn't* mean, "We dawdled, so we didn't finish."

And the court has a minor incentive to deny an extension: their own deadlines aren't extended. Every day of delay in receiving the map from the Commission is one day less the court gets to review it.

**Article VI, Section 2.F. Mandated Judicial Review**

***Article VI, Section 2.F.1. Review Criteria and Deadline***

> The Provincial Court shall review all submitted district maps for constitutionality. A ruling must be provided no later than March 31 of the year after the submission deadline.

This is one of those places where something appears to require no explanation, but it actually does. The Voting Rights Act required preclearance of congressional maps before they could take effect in jurisdictions with a history of racial discrimination.[19] However, in *Shelby County v. Holder* (2013),[20] the Supreme Court struck down the formula in Section 4(b) that specified how to determine which jurisdictions are covered. Without the formula, the preclearance requirement in Section 5 is unenforceable. It's still on the books, but without a way to know which jurisdictions are affected, there is no way to apply it.

This subsection of the Charter renders all of that moot, at least with respect to congressional maps (the VRA also covers other voting changes). Here, there's no formula. Every jurisdiction in every state requires preclearance every time.

### *Article VI, Section 2.F.2. Procedures for Non-Compliant Maps*

> If the court finds the maps unconstitutional, the previously enacted districts shall remain in effect for one election cycle, and a new Redistricting Commission shall be empaneled in accordance with the same procedures.

So what happens if the Commission doesn't get it right? The old maps remain in use, and a new Commission is put into play. Doesn't this meet the often asserted popular definition of insanity: Doing the same thing over again and expecting a different result? Not quite.

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[19] *See* **Voting Rights Act of 1965,** Published in **Volume 79, United States Statutes at Large,** beginning at page 437. Specifically, look for "SEC. 5. CHANGES IN VOTING PROCEDURES," which can be found on pages 439-440. This reflects the law as originally enacted by Congress, before any portions were later reorganized or codified into the United States Code.

[20] See *Shelby County v. Holder,* **Volume 570, United States Reports,** opinion begins at page 529 (2013).

> The second Commission shall follow the same rules as the first. However, the second Commission may request guidance from the Provincial Court during its deliberations. If the second Commission's maps are found unconstitutional, a new Commission shall be seated using the same process, including the provision for court guidance. This cycle shall continue until a valid map is approved.

What's different is that the new Commission can collaborate with the Provincial Court. What that means is that they can ask the court, "Is this ok? Are we on the right track?" Or, they could ask, "What would we need to change to make this acceptable?" The court doesn't draw the maps for them, but it gives guidance to help the new Commission achieve a better result. Coupled with the already existing power to draw in expert consultants, there's really no reason why a subsequent Commission can't get it right.

And if they don't? The process repeats until they do.

***Article VI, Section 2.F.3. Durability of Districts***

> Once approved, district maps must remain in effect until the next decennial redistricting cycle. No changes may be made unless expressly required by this Charter or by a final court ruling with jurisdiction.

This clause ends mid-decade redistricting. It makes it unconstitutional. This puts an end to the partisan abuses of history that I highlighted in the introductory commentary to Section 2.

### *Article VI, Section 2.F.4. Judicial Jurisdiction for Redistricting*

> Provincial Appellate Courts shall have original jurisdiction on all matters and controversies regarding redistricting.

This was already implicit from the language of Section 2.F.1,[21] but this makes it explicit. The larger question is: why? Typically, cases are initially heard at the District Court level. Provincial courts are generally not trial courts by jurisdiction.[22]

The answer is simple: redistricting involves the entire state's representation, and a District Court, under this Charter, has jurisdiction limited to a specific congressional district.

### Article VI, Section 2.G. Long-Term Transparency

> The Federal Elections Commission shall maintain a public archive of all final district maps, commission records, court rulings, and related materials. All such materials shall be made accessible to the public in a searchable, permanent online database. When new maps are adopted, superseded maps must be turned over for permanent retention in accordance with Article VI, Section 3 of this Charter.

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[21] **National Charter of the United States** (unratified), Article VI, Section 2.F.1. Review Criteria and Deadline.
[22] *See* **Ibid.,** Article IV, Section 2.B.4. Federal Provincial Appellate Courts and the Territorial Provincial Appellate Court.

In the short term, the work of a Redistricting Commission is published as noted in Article VI, Section 2.D. But in the long term, it's vital to preserve the record, not only of current maps and Commissions, but of historical ones. That's what this provision is about.

## Article VI, Section 3 – Transparency of the Federal Government

### Article VI, Section 3.A. General Transparency Requirement

> All government institutions and all elected or appointed officials shall operate with transparency. All laws, decisions, public expenditures, and official actions must be open to public review within fourteen (14) calendar days, except as expressly limited by this Charter.

Two weeks.

That's the longest anyone should ever have to wait for records of ongoing government action. This subsection carves that requirement in stone.

"Why should that matter?" As the collective sovereign, the citizens *need* to know and understand the actions and decisions of our government. That doesn't mean there are no privileged or classified items of information (those are discussed in subsequent subsections), but the Charter begins by presuming openness.

Put another way, what about Freedom of Information Act requests? Journalists and watchdogs use these frequently. You could create a Shenanigans Slow-Walk Index to predict the likelihood of questionable behavior by simply measuring how long the government takes to fulfill these requests. When everything is on the up-and-up, the requests are filled promptly. When things are on shakier ground, there's "complexity" or "a backlog." By forcing a presumption in favor of publication, this Charter ends those games.

***Article VI, Section 3.A.1. Digital Publication***

> All unclassified government documents, including foundational documents, amendments, Statutes at Large, United States Reports, United States Code, Congressional Record, Executive Orders, Executive Proclamations, and similar documents, must be available digitally online or through other mass-distributive technology that may become available.

Most of the documents described in this clause are already available online. However, there's no constitutional mandate for that. It's all encoded in statute and regulations.

Congress can repeal laws.

The President may annul regulations (or direct agencies within the Executive Branch to do so on the President's orders).

Again, if the citizens are sovereign, they need access to information. What does the Charter say? What about the (hypothetical) third amendment to it? Who issued Executive Order 61110, when, and what does it say?

This clause locks the requirement into constitutional text. It isn't a mere aspiration. It isn't even ordinary law. It's fundamental to the Republic.

That's the way it should be.

***Article VI, Section 3.A.2. Accessibility***

> Published documents must be searchable, machine-readable, and available to the general public at no cost.

Posting a mass image scan of the text, which can't be searched, isn't up to scratch.

Charging the public for access to this information—information that belongs to them—is unacceptable.

The idea is transparency and accessibility. This subclause kills malicious compliance and preserves the intent of the General Transparency Requirement.

***Article VI, Section 3.A.3. Retention Mandate***

> Congress must, by law, establish and review every ten years the standards for retention of materials required by this Charter.

This mandate uses the word "must." Congress is required, in no uncertain terms, to decide how records are retained. And this isn't a "one and done." Congress has to review the standards every decade. New threats emerge, new technologies develop, and better best practices are invented. Congress is forced to re-evaluate in light of those changes.

> Congress shall, at the same time, establish and review retention criteria and methods for other documents and records not mandated for retention by this Charter. Such

> criteria shall account not only for temporal utility, but also for cultural and historical preservation.

There are millions of other records that exist. Personal schedules, notes, and the like are generated every minute of every day. They may seem mundane and unimportant in the grand scheme.

Sumerian bureaucrats kept detailed notes on taxes, commercial transactions, and food consumption. Millennia later, they are the only way we know *anything* about their culture beyond what weathered ziggurats can tell us.

A rule of secrecy was in place at the Philadelphia Convention in 1787, but James Madison kept voluminous notes about the proceedings, which were published after his death. Though biased, they are invaluable.[1]

How do we decide today what's essential and what isn't for the future? We can't really. But we can try, and someone has to be in charge of making those decisions. That role is given to Congress in this clause. There's not a ton of detail. It's just a clear message that utility alone isn't the sole basis for retention.

[1] And not only to so-called "originalists" in the judiciary. Historians know more about the proceedings of the convention because of his notes, even though he edited them throughout his life, sometimes a bit dishonestly. It can be reasonably argued that the evidence of those alterations is valuable in and of itself because it shows an evolving understanding of a major historical event that he personally participated in.

> The first such review must be completed within eighteen (18) months of ratification of this Charter.

This is just to ensure that Congress doesn't do what Congress does, and delay for ten years before conducting its first mandated review.

### *Article VI, Section 3.A.4. Physical Retention of Primary Documents*

> Physical copies of those primary documents that are physically retained must be stored as provided by law. Such laws must address security from theft, tampering, decay, or foreseeable hazards, such as fire or flood.

While not every document needs to be retained in physical form, those that are must be appropriately protected against aging and other hazards.

This isn't catastrophic speculation. Some records from the first census are now lost due to fire and other deterioration.[2]

This clause requires us to take reasonable steps to mitigate those hazards. Nothing is foolproof, but the Charter demands a robust attempt.

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[2] There are multiple issues here, so the details are a little murky. But accounts seem to agree that many surviving records of the 1790 census were destroyed in a fire at the U.S. Department of Commerce in 1921. The records for Delaware, Georgia, New Jersey, Virginia, and South Carolina were permanently lost. Some records for North Carolina were also either lost or were incomplete to begin with. Some accounts also suggest that these records had already begun to deteriorate before the fire. This sorry tale makes my point far better than any fiction ever could.

***Article VI, Section 3.A.5. Controlling Agency***

> Congress shall designate an agency with overall responsibility for records. That agency may be any that Congress chooses, but there must only be a single agency with primary oversight. Congress may delegate portions of retention and publication, but a single agency must retain full authority over all processes.

"Too many cooks spoil the stew."

This clause acknowledges that multiple agencies may be involved in records retention and does not mandate otherwise. It requires Congress to choose one of those agencies to be the boss. Someone has to be in charge. That's it.

**Article VI, Section 3.B. Limits to Executive Privilege**

> The President receives confidential advice while carrying out the duties of the Office. This advice is generally subject to Executive Privilege, meaning that it may remain secret for a period of time to encourage the free flow of frank advice to the President. The purpose of Executive Privilege is to protect the advisor, not the President.

Hoo boy.... "How'd you handle this one, Gary? It's a dilly of a pickle."

Executive Privilege is vital. The President needs an advisor to be free to say, "We should bomb so and so," even when that's politically radioactive. The President should examine every possibility and every angle, and their advisors are responsible for ensuring that happens. Sometimes, that means saying things you wouldn't say at the Christmas party.

Nixon,[3] Reagan,[4] George W. Bush,[5] Obama,[6] and Trump[7] all invoked Executive Privilege. In none of these cases was candid advice the issue. Political and legal consequences were.

So this subsection is designed to preserve that deliberative candor and protect the advisor. It defines and establishes Executive Privilege. It also explicitly states that it is not intended to protect the President.

This privilege applies only:

- To advice given in direct support of their constitutional duties; and
- To staff whose roles are publicly defined by law or by this Charter.

This brief list outlines who is covered by Executive Privilege and what advice is considered privileged. It's a short list.

This advice is subject to privileged status until:

- January 20, eight years after the President leaves office, or
- Congress, by simple majority vote, orders the President to release records of that advice to the courts or to Congress, or
- A Federal Court rules that Executive Privilege does not apply.

[3] Watergate.
[4] The Iran-Contra Affair.
[5] Blocked congressional subpoenas for aides like Karl Rove and Harriet Miers.
[6] The "Fast and Furious" gunwalking scandal.
[7] Russia election interference investigation, Ukraine pressure campaign, January 6 Capitol attack.

Some things last forever. Executive Privilege isn't one of them.

Courts can still rule that Executive Privilege isn't applicable in a given situation.

Congress can similarly compel the release of privileged records. The critical point in this mechanism is that the Charter explicitly only requires a simple majority. That language isn't included for filler. Partisanship exists. I hope this Charter will mitigate its impact, but I'm not naive enough to believe that mitigation will be perfect. The simple majority mandate reduces the likelihood of gamesmanship.

Finally, Executive Privilege lasts for eight years after the President to whom the advice was given leaves office. That allows a cooling period while preserving historical records and accountability.

Executive Privilege? Upheld, but bounded.

**Article VI, Section 3.C. Sunset Review and Declassification**

> Five (5) years after an official leaves their final term in office, the sitting President or a cleared and designated deputy shall review their classified records. The reviewed records must be released to the public within a reasonable time, and no later than July 1 of that year.

In 1947, a rancher near Roswell, New Mexico, found strange debris on his property. We've been arguing and speculating about it ever since.

Now, I'm not weighing in on aliens. I'm proposing a constitutional text. What this text does is require a sunset on classified material. A sunset that could have ended all of the debate and speculation....

The President may reclassify specific records only if they are:

- Vital to national security, *or*
- Related to ongoing foreign intelligence or to foreign intelligence assets still in harm's way, *or*
- Part of ongoing military operations, *or*
- Tied to active diplomatic negotiations.

"But some of that material may need to remain classified." True. That's why there's a mechanism to allow that. But that mechanism has specific requirements that must be met. We protect our national security. We don't spill the beans about our ongoing intelligence sources and methods. We don't give away military secrets. And we don't release classified information relevant to ongoing diplomatic negotiations. Those are common sense.

"Vital to national security" means releasing the information would cause harm to the United States, reveal sources or methods, or endanger the lives of informants or agents of the United States. Avoidance of mere international embarrassment is not vital to national security.

"But, Gary, they'll just claim 'national security' every time...." That *is* a consistent pattern, sometimes born out of laziness, sometimes out of more nefarious considerations. But the Charter anticipates that. The phrase "vital to national security" is explicitly defined here. **And** there is a sentence *in the Charter's text* that says that avoidance of national embarrassment is not the same as national security. You want to tap Angela Merkel's phone?[8] Eventually that's going to come out....

> Whenever the President reclassifies records, the Supreme Court shall review such classified records to determine whether the classification complies with the requirements of this Charter.

The question always is, "Who decides? And who keeps the decider honest?" In this framework, the President or their designated deputy decides. But it is a requirement that the Supreme Court keep them honest.

> The Court must release its ruling within ninety (90) days of receiving both:
>
> - The classified record; *and*
> - The executive's written justification for withholding it, which the Executive Branch must provide.

[8] **Der Spiegel**, reporting classified information leaked by Edward Snowden, revealed that the U.S. National Security Agency had monitored the mobile phone communications of the sitting German Chancellor, Angela Merkel. Had that not been leaked, it would likely still be classified.

The executive is required to provide both access to the record *and* a written justification for its continued classification. And the Supreme Court can't ignore it. The Court must rule within 90 days of receiving both elements.

Information can be reclassified, but there is a process and standards of acceptability.

It doesn't just stay classified because the President said so.

**Article VI, Section 3.D. Diplomatic Negotiations**

> The President, Vice President, Secretary of State, Ambassadors, and Consuls, or their lawfully designated deputies, may withhold records of ongoing diplomatic negotiations. These records must be preserved and made public upon the conclusion or official abandonment of the negotiations, except for portions:

- Lawfully classified to protect intelligence sources and methods; or
- Connected to active military operations.

Diplomatic negotiations almost inherently involve privileged information. It's the nature of negotiation in general and diplomacy, in particular. Diplomatic secrets can stay secret right up until the negotiations are concluded.

Now, sometimes diplomatic action also involves the troops or intelligence information. Those can be kept classified.

If Senate consent is required for a treaty or agreement, the relevant records must be made available to the Senate prior to any ratification vote, but must be published once the treaty is ratified, unless classified according to the other provisions in this Section.

When it comes time to ratify a treaty, the Senate gets to see everything.[9] If the treaty is ratified, everything that isn't classified will be published.

[9] Members of Congress have access to classified documents under special procedures designed to keep the information secret.

## Article VI, Section 4 – Amendments

Depending on how you count, there have been north of 11,000 amendments to the Constitution of 1789 proposed since 1787.[1]

We've adopted 27.

No serious student of that document or its history can say the founding generation didn't intend to amend the 1789 constitution.

"That useful alterations will be suggested by experience could not but be foreseen. It was requisite, therefore, that a mode for introducing them should be provided."[2]

The Articles of Confederation had been so impossible to amend that the provision was functionally useless.[3] That wasn't the only reason the framers abandoned the Articles, but it was on the shortlist.

So they set out to make amendments easier in Article V of the 1789 Constitution. They succeeded. By 1791, we had the Bill of Rights. The Eleventh and Twelfth Amendments followed along reasonably promptly (1795 and 1804, respectively).

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[1] *Welcome remarks for "Constitution Day: The 10th Annual State of the Constitution—The Future of Policy Making",* NATIONAL ARCHIVES, (2016), https://www.archives.gove/about/speeches/2017/future-policy-making.
[2] **The Federalist, No. 43**, James Madison (1788)
[3] *See* **Articles of Confederation**, Article XIII: "…nor shall any alteration at any time hereafter be made in any of them, unless such alteration be agreed to in a congress of the united states, and be afterwards con-firmed by the legislatures of every state."

Then it was 61 years and a Civil War before we got another (we actually got three between 1865 and 1870).

After those three, it would be 44 years before another four were passed in a flurry (1913-1920).

Two more in 1933, then none until the 1960's and 70's.

The last one was ratified in 1992, but it almost doesn't count because it was originally proposed in 1789 as part of the Bill of Rights, but failed ratification.

So they succeeded.

But not well enough. The long gaps between amendment windows demonstrate the process has flaws. In each of those windows, partisanship broke the process until some form of rupture happened.

The Civil War.

The Progressive backlash of the early 1900's.

The Depression.

The Civil Rights Era and Vietnam.

Even the 27th Amendment fits this pattern, though imperfectly. The early 1990's, at least as I remember them, were a short-lived era of new hope for our nation. It was the so-called

"End of History." The economy began growing for normal Americans after the rough decades of the 1970's and 1980's. A college student took on the project of reviving an amendment to put limits on how Congress can raise its own pay. And he succeeded.

But that was the last hurrah.

America became hyper-partisan. Getting *anything* out of Congress became extremely difficult. Once out of Congress, the idea of getting agreement from three-quarters of state legislatures on *anything* became laughably naïve.

Today, the amendment process is functionally impossible.

**Article VI, Section 4.A. Petition Qualification**

> The People of the United States shall have the Right to propose amendments to this Charter through public petition. Neither Congress nor the States enjoys the Right to propose amendments.

This is a complete reimagining of the process of proposing amendments to foundational law.

Article IV of the Constitution of 1789 says, "The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the

Application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing Amendments...."[4]

Here, the States and Congress aren't in the picture. At all. In fact, the Charter flatly says so. This is a power reserved to the people. Notice that the language says "the people," not "the citizens." That's a precise use of language, as we will see below.

> To qualify for consideration, a petition must contain valid signatures from at least three and one-half percent (3.5%) of the national population, as measured by the most recent decennial census. Signatories must be adults residing within the United States, but Citizenship is not required.

So what makes a petition valid? Signatures equal to 3.5% of the entire population of the U.S. Those signatures can come from any adult resident, citizen or not (remember: "the people"). That's not because the citizens suddenly lost their sovereignty. It's because this is the *proposal* phase. The petition places the proposed amendment on the national ballot; it doesn't mean it's ratified yet.

> Petitions must obtain the required number of valid signatures within three hundred sixty-five (365) days after filing a notice of intent with the Federal Elections Commission. The Federal Elections Commission shall verify the validity of petition signatures by comparing them to their corresponding National Identification Numbers.

[4] **Constitution of 1789,** Article V, quoted in part.

You can't just go around gathering signatures for years, either. You file a notice of intent, then you have one year. That's it. The FEC verifies the signatures against the NINs of all the people who signed. The FEC *doesn't* have the authority to make any judgment on the *merits* of the proposed amendment.

It's the people's process. It's an open process. It isn't an unlimited one.

**Article VI, Section 4.B. Amendment Ratification**

> If the petition is certified by the Federal Elections Commission, it shall proceed to a ratification vote during the next federal election, unless that election occurs within one hundred eighty (180) days of certification. In that case, the vote shall take place during the subsequent federal election.

Once the FEC has certified the signatures, the proposal goes to the ballot. The vote happens that November, unless that's less than six months away. If it is, ratification gets decided in November the following year. Pretty straightforward.

> Although any resident may sign a petition, only Citizens may vote on Charter amendments. Ratification requires the approval of at least three-fifths ($^3/_5$) of those Citizens voting on the question. Any amendment ratified is part of this Charter with equal weight in law.

This is where the citizens exercise sovereignty. Anyone affected by the government can sign a petition, but it's the citizenry that decides whether the proposal becomes an amendment.

A full 60% of the voters must approve it. Why?

Two reasons.

First, 60% is a challenging but achievable threshold. The Constitution of 1789 requires "...when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof...."[5] That nearly impossible threshold has made the 1789 document functionally unamendable in our polarized nation.

"But we've amended it 27 times."

True.

The first ten were a condition of the ratification of the Constitution of 1789 itself. Three more were forced by the Civil War.

Two more imposed, then repealed Prohibition.

[5] **Constitution of 1789,** Article V, quoted in part.

The most recently ratified amendment took 203 years to be ratified. There hasn't been another amendment ratified since 1992 (at the time of this writing, that's 33 years ago, or 13.98% of the lifespan of our Republic).

Looked at another way, if we accept the conservative 11,000 proposed amendments, the success rate of amending the 1789 Constitution is somewhere around 2 tenths of one percent. Subtract the Bill of Rights from the 27 amendments (since they were conditional for ratification of the Constitution of 1789 in the first place), and that drops to one-and-a-half tenths of one percent.

It's functionally unamendable.

The second argument for the ratification threshold for amendment is that three-fifths (60%) is also the ratification threshold for this Charter. It makes logical sense that an amendment should meet the same threshold as the Charter it amends.

> The full text of the proposed amendment must appear on the petition circulated for signatures. It must also appear on the ballot during the ratification vote.

"Ballot initiatives" in Texas (a euphemism for proposed amendments to the state constitution) are notorious for appearing on the ballot phrased in intentionally misleading language. I believe that if the actual text of an amendment isn't shared with voters and can't be embraced by them, it doesn't deserve ratification.

> If a petition fails to be ratified, it may be resubmitted, but only via a wholly new petition.

A proposed amendment doesn't have to be one and done. It can be reintroduced if it fails, but it has to go through the entire process again.

**Article VI, Section 4.C. Legal Challenges**

> Legal challenges may be filed concerning petition certification or the election process. The courts may not block or remove a petition solely because it seeks to add, alter, or eliminate a fundamental Right protected by this Charter.

I owe judges a bit of an apology. Throughout this commentary, I've been *extremely* critical of them. The truth is, most judges do a good job in a difficult role.

Part of the reason it is so tricky is that laws, especially the Constitution of 1789, don't always provide clear guidance on how they should be interpreted. I tried to address that generally in Article IV, Section 5. Here, the Charter addresses it specifically with respect to the amendment process. This subsection explains what the courts can and can't do regarding legal challenges to amendments. It isn't sexy, just functional.Article VI, Section 5 – Emergency Procedures for Executive Removal

> At any time that the President, upon expiration of their term or following final adjudication or certification of removal, refuses to vacate office as required under this

> Charter, they shall be committing an act of treason as defined in Article IV, Section 7.A of this Charter. Such a figure shall be designated a Rogue President.

What happens if a President loses an election but refuses to yield power? What happens if they are impeached by the House, tried and removed by the Senate, and then refuse to leave office? What if they become ineligible under any qualification of Article III?

That's an especially troubling question since they are the Commander-in-Chief.

Refusing to leave office when legally required to do so is the same as launching a military attack on the White House. It is an attack on the nation. It is an act of war. Therefore, it is treason—not just under this Charter. You could also argue that it would be under the Constitution of 1789.

Treason at Philadelphia as "levying War against them, or in adhering to their Enemies, giving them Aid and Comfort."[6] As I've said, refusing to leave office when legally required IS an act of war against the United States. It is an attempted coup. There is no other way to frame it. Framed that way, it even meets the 1789 definition.

Under this Charter, framing of this as treason is simply applying the existing definition: "Treason against the United States shall consist only in leving war against them by a Citizen of the same, or in adhering to their enemies—whether foreign states organized non-state actors engaged in hostilities or armed conflict against the United States—giving them aid

[6] **Constitution of 1789,** Article III, Section 3.

and comfort, or by a President or Vice President refusing to vacate office when legally required to do so under this Charter."[7]

That covers the treason angle. But why create a designation of "Rogue President"? That's actually just for clarity. It makes a straightforward way to refer to the treasonous ex-President when contrasting them to a legal and legitimate one. That applies both within the Charter and in the inevitable legal and media discussions that would follow.

**Article VI, Section 5.A. Interim Military Command**

If a President is the Commander-in-Chief, which they are,[8] then what happens if a Rogue President tries to employ military power?

> All military and Executive Branch departments must immediately cease compliance with any new orders issued by the Rogue President.

Oh. That's clear enough. But who *is* in charge of the military, then? Because just letting them "hang out" sounds like a bad idea.

> Command of the military shall transfer to the Secretary of Defense, unless they, too, are legally disqualified or implicated. If the Secretary is impugned or incapacitated, command shall pass to the Chair of the Joint Chiefs of Staff.

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[7] **National Charter of the United States** (unratified), Article IV, Section 7.A. Treason.
[8] *See* **National Charter of the United States** (unratified), Article III, Section 2.A.1. Commander-in-Chief: "The President is the Commander-in-Chief of all nationalized military forces in the United States."

That's simple enough. What if they decide to try to "restore order" by imposing martial law or something?

> Neither official may use military forces for domestic law enforcement or political purposes.

That's comforting. What *can* they do, though? What if this were part of a coordinated coup? Or what if a rival nation decides to attack while we are distracted, opportunistically?

> Their authority is limited solely to the defense of the United States against armed attack or armed foreign incursion. Within that context, however, command authority is complete provided that no orders are given that violate the law or this Charter.

That's covered, too. They have robust command authority, but it's confined to defending the nation. Note that the language says "armed attack **or** foreign incursion." That doesn't limit them to foreign threats only. It *does* restrict them to defending against armed attacks. They can command the military to protect against an armed rebellion or an invasion, but there's no authority for martial law or anything that looks like it.

**Article VI, Section 5.B. Civilian Oversight of Executive Departments**

> Each department of the Executive Branch shall be led by its respective Cabinet Secretary, or, if unavailable, the most senior appointed Official within that department, subject to Congressional oversight. If no appointed Official is available, the most senior

career employee, as determined by title. In the event of ties in seniority, total active federal service shall serve as a tie-breaker.

Any Executive Official who colludes with, supports, or fails to oppose a Rogue President is considered unavailable under the terms of this provision.

Where subsection 5.A covers command and control of the military, section 5.B addresses leadership of executive agencies. There's a precise flow from the Cabinet downward to career employees. Notice how the language resolves ties in seniority. The person with the longest total federal government service is the leader.

"The Secretary of Defense is present, but they are supporting the Rogue President." The last sentence makes it clear that presence alone is not the same as availability. If an official is supporting (or playing the "I didn't support them, I just didn't think it was wise to intervene" game) a Rogue President is *not* available. That's because they're part of the problem.

**Article VI, Section 5.C. Temporary Duration**

This emergency structure may only remain in effect until a President lawfully assumes office under the provisions of this Charter.

This emergency protocol is not designed to remain in play for long, at all. The expectation is that it should be hours or days, at the most. This Charter establishes a succession.[9] It should simply be a matter of finding the next person in line, then swearing them in.

This provision shuts down any notion that these emergency provisions establish a military government or "provisional" civil government. The only thing it authorizes is a bridge to transition away from a Rogue President to a legitimate one.

### Article VI, Section 5.D. General Compulsion

> Failure to comply with this Section shall constitute Failure to Uphold Oath of Office. Doing so shall expose any Official guilty of such to further criminal or civil liability, as provided in this Charter and by the laws duly enacted by Congress.

This final subsection fully drives home the point. This section of the Charter is the law, not a suggestion.

## Article VI, Section 6 – Military Oath

> Every member of the active or reserve military, as well as the National Guard, whether enlisted, warrant officers, or commissioned officers, must swear or affirm the following, legally binding oath:

[9] *See* **National Charter of the United States** (unratified), Article III, Section 1.B.1. General Presidential Succession.

Everyone in federal military service, or who can be called to federal military service, has to swear the oath. Notice that this says it is legally binding. That means that, in addition to any other criminal or civil proceedings, a person who fails to fulfill this oath can be charged with Failure to Uphold Oath of Office, which permanently disqualifies anyone adjudicated to have done so from ever holding elected or appointed office in the United States.

"I [full legal name] do solemnly swear [or affirm] that I will uphold and defend the Rights of the American People, and that I will do so with full regard and faith to the National Charter of the United States of America. I will defend the People against all enemies, foreign and domestic. I will bear them true faith and give them my allegiance. I will obey the lawful orders of the President and the officers appointed over me according to the laws and regulations of the National Charter and Congress. I understand this oath [or affirmation] is binding and that I will be held legally to what I am swearing [or affirming]."

The current military swears an oath established by federal law. For enlisted people, that oath is:

*"I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I will obey the orders of the President of the United States*

*and the orders of the officers appointed over me, according to the regulations and the Uniform Code of Military Justice. So help me God."*[1]

For officers, the oath is:

*"I, AB, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation and purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God."*[2]

It's substantially the same as the oath for enlisted service members, though there are some differences related to the difference between enlistment and commissioning.

So, how does this Charter's oath differ from those statutory ones?

First, the oath is enshrined in constitutional language. It isn't subject to redefinition by Congress.

Next, our current oaths begin with a duty to the Constitution. The Charter's oath also calls for a duty to the Charter, but it places the "Rights of the American People" first.

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[1] **Title 10, United States Code, Section 502** (current codification of the oath of enlistement for enlisted members of the Armed Forces).
[2] **Title 5, United States Code, Section 3331** (oath of office for those appointed to an office of honor or profit in the civil service or uniformed services).

Third, the military members swear to defend the people against all enemies. In contrast, the current statutory laws call on them to swear to uphold and defend the Constitution of 1789 against those enemies.

The current oath calls for allegiance to the Constitution. The idea behind that is that the military should not swear to defend an individual (particularly the President). This Charter aligns with the general sentiment but calls for allegiance to the people *through the mechanism* of the Charter.

The Charter's oath and the current oath of enlistment both require the service member to obey lawful orders.

Finally, this oath requires the person taking it to acknowledge that the oath itself is legally binding.

The general philosophy of our current oaths (which are statutory, not constitutional), remains in the Charter's oath, but the specifics differ a little.

## Article VI, Section 7 – Digital Infrastructure

### Article VI, Section 7.A. Retention of Digital Infrastructure

> All digital infrastructure used to carry out essential government functions must remain under the direct control and operation of the Government. Such systems may not be outsourced to or operated by private entities.

There is a mania in American politics. "Private enterprise can do it better and more efficiently." But private enterprise has a verifiable record of cutting corners in the name of profit. Not every company. Not all the time. But we're talking about "essential government functions." That's not an arena where we can afford to take unnecessary risks.

For that reason, and that reason alone, the digital infrastructure necessary to the essential functions of government has to be controlled and operated by the government. And that duty can't be outsourced. It just can't be. Not because everyone in the private sector is shady; they aren't.

But enough of them are to make relying on them too risky.

### Article VI, Section 7.B. Exclusive Authority of Government

> Subject only to the Sovereign will of the collective Citizenry, the Government shall maintain full and exclusive authority over public records, communications, and digital systems necessary for constitutional governance.

This subsection could technically be left out. It's implied in Section 7.A, which we just covered. But it appears to drive the point home fully and finally. End User Licensing Agreements (EULAs), proprietary protocols, non-disclosure agreements, and all the other usual tools of the trade are irrelevant when dealing with government systems. The federal government is the authority unless the citizens override it. Full stop.

**Article VI, Section 7.C. Duty to Modernize**

> The Government has an affirmative duty to modernize and adapt its infrastructure as technology develops, ensuring security, accessibility, and resilience in accordance with this Charter. Congress must establish in law requirements to ensure that modernization and adaptation must safeguard the security and reliability of new technologies and platforms before implementation.

Imagine what it would be like if the data modeling the Department of Energy uses to simulate reactor conditions (and thus avoid catastrophe) relied on a core component in the programming language Fortran. It does. It's called NJOY.

What about if part of NOAA's hurricane prediction and analysis relied on a Fortran system? It does. It's called the Modular Ocean Model (MOM).

I could go on. And the examples are far broader than just in computer code. But the point is made. These systems still work, and modernization is expensive. So the choice has been made, over and over, to delay or ignore updating these systems. Now, we are relying on outdated technology built for a security environment that existed 50 years ago, which only a few developers are qualified to work with.

That's not good enough.

The Charter emphatically demands that we keep our digital infrastructure up to date and relevant.

But it doesn't demand hasty action. Instead, it compels Congress to set requirements in place that will ensure security and reliability before implementation.

Modernize. Now and in the future. But do it responsibly.

## ARTICLE VII – SUPREMACY, RATIFICATION, & TRANSITION

### Article VII, Section 1 – Supremacy & Continuity

> This Charter is the supreme law of the United States.

The Constitution of 1789 was careful to explicitly state that it was the supreme law of the land.[1] This Charter does the same. However, the 1789 document listed the Constitution, laws, and treaties in the same breath.[2] This Charter does not do so. In some ways, this sentence is a partial restatement of the hierarchy set in Article IV, Section 5.A.

"But there's don't nothing that says that federal law takes precedence!" There is. It just isn't here. It's discussed in Article IV.[3]

> All laws and contracts entered into before the Ratification of this Charter remain in effect, unless contradicted by this Charter. When a controversy arises regarding them,

[1] *See* **Constitution of 1789**, Article VI, Clause 2.
[2] **Ibid.,** the actual full quote is a mouthful: "This Constitution, and the Laws of the United States, which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land...."
[3] **National Charter of the United States** (unratified), Article IV, Section 5.A. Interpretational Precedence: "...State law exists outside of this hierarchy. When state and federal law are in conflict, federal law prevails."

> they must remain valid unless directly contradicted by this Charter or repealed by Congress.

The Founders were explicit that the Constitution of 1789 didn't suddenly nullify existing contracts and the like.[4] That applied specifically to government contracts, and a brief study of American history under the Articles of Confederation will show why.

[4] **Constitution of 1789,** Article VI, Clause 1: "All Debts contracted and Engagements entered into, before the Adoption of this Constitution shall be as valid against the United States under this Constitution as under the Confederation."

Still, they were wise to consider that principle. This Charter takes a similar approach. A significant difference between the United States today and in the late 18th century, though, is that we have centuries of law, contracts, and precedent already established. There is real danger that adopting a new foundational law like this Charter would nullify all of that. Americans understand that the world works a certain way *because* of all of that law and precedent. Throwing it all away would create incredible instability. In this passage, the Charter says, in effect, "Hey, relax. Everything's fine. Unless you're trying to do something that this Charter said you can't, we're good." The Charter is bold and significantly retools the American government, but it isn't change for change's sake or a wholesale rejection of everything that came before. We keep what still serves us.

> If the Courts must strike down a law, whether it existed before this Charter or is adopted after its Ratification, care must be taken to sever the unconstitutional provision(s) from the rest of the statute, if possible.

Still, some laws or contracts will be litigated. Some will be struck down. But this passage requires that, even then, courts look to see what can be salvaged from the old law. Again, this doctrine isn't new (severability is core doctrine), and the application of it prevents every law or interpretation from needing to be new, as well.

## Article VII, Section 2 – Ratification

First, I need to address the large tusked mammal in the room.

Can the Constitution of 1789 be replaced? There's no inherent mechanism built in that allows for that, unless you consider a runaway constitutional convention.

To resolve this tension, we need to focus on the foundational principles of American law.

First, we look at the Declaration of Independence. "But the Declaration isn't binding law." No? Then why does the United States exist?

The next thing I say will sound arrogant, because I, a bolt salesman, am contradicting professional jurists.

That. Doctrine. Is. Wrong.

Why? Let's think about it logically. What does the Declaration do? It declares the 13 colonies to be a separate and sovereign set of states, separate from and independent of Great Britain. No one will argue with me on that point. It's literally spelled out in the Declaration itself:

*"We...do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved;*

*and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of fight do."*

That's pretty unambiguous, right?

So.

If that isn't legally binding, with whom did Great Britain war for seven years before that treaty? To what entity did Cornwallis surrender? With whom did Great Britain negotiate the Treaty of Paris?

Of course, it is legally binding. Arguing otherwise is farcical.

That's the mechanism I'm invoking. That's why ratification is required.

And if it *is* binding, its words have force, including this passage:

*"That whenever any Form of Government becomes destructive of these ends* [the inalienable rights and the formation of government to secure them]*, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness."*

Some will argue that the Declaration is binding in the sense of establishing sovereignty, but not binding as constitutional law. But it is the very establishment of sovereignty that's in

question here. We exist, as a nation, based explicitly on the concept of consent of the governed.

If the people consent, the government exists. If they don't, it doesn't. It's an indisputable binary.[1]

It's also borne out in history throughout the world. Whenever a government, whether democratic or not, loses the collective support of the people, it collapses.

The Declaration was written by the same generation of men as those who drafted the Constitution of 1789. In fact, in many cases, it was the same *individual* men. No doubt that was much on their mind when they met in Philadelphia in 1787 and completely ignored their mandate (proposing amendments to the Articles of Confederation), instead drafting an entirely new constitutional order.

In other words, it was legal when we severed ties with Great Britain, and, in fact, our nation was founded *explicitly* on the notion of its moral legitimacy, which superseded Crown law. It was similarly legal when the framers, only eleven years later, replaced their first foundational law with the Constitution of 1789.

[1] A critic will point to the fact that states like North Korea exist. They do, but they also fall. Their persistence was pointed out by Jefferson, but rebutted: "Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security."

Constitutional replacement isn't radical. It is in our DNA. And it can't reasonably be argued that replacing the Constitution of 1789 is illegitimate, because doing so logically renders that document illegitimate, as well.

So, if replacement is legitimate, how does this Charter get ratified?

**Article VII, Section 2.A. Ratification Timing**

> Congress shall publicly announce, no later than April 30 of the calendar year in which it is to be considered, a national referendum on the Ratification of this Charter. The vote shall be held on the first Tuesday of November.

This provision requires public announcement of a referendum for ratification, at least six months' notice, and a fixed date on the calendar.

The April 30th date, coupled with the November election date (which aligns with the Charter's date for federal elections),[2] sets up a six-month review window. Why? Because voters need time for the referendum's existence to sink in, and then enough time to research and decide whether to support it.

**Article VII, Section 2.B. Eligibility & Procedure**

> All currently eligible voters may participate in the referendum on Ratification.

[2] *See* **National Charter of the United States** (unratified), Article VI, Section 1.A.1. Timing and Access.

This is entirely non-controversial. If you're a voter, you can vote on ratification. Notice, though, that this is *not* the way ratification of the Constitution of 1789 was done, nor is it how amendments to that document have been ratified.

I need to provide some context. At first, it may seem like I'm meandering, but I promise that I'm not. Many commentators have noted that the framers didn't like "democracy." Those commentators then explain why the United States isn't a democracy. They're wrong, but more importantly, they misunderstand the scheme to which the framers objected.

What the framers disliked was *direct* democracy. They didn't really trust the people. They thought we could be easily manipulated into voting out of passion, rather than from reason. History, particularly the history of the last few decades, has shown that distrust was well-founded. The problem is, their solutions didn't make the system any better than it would have been. We're still vulnerable to populist sentiment. The only effective inoculation against that is authoritarian rule. Since that's obviously not who we are as a people, the vulnerability to populism is one we'll always have to face.

In any case, since they feared the people's direct will, they built buffers. One of those buffers was the ratification process of the Constitution of 1789 and the amendments.

The 1789 Constitution was to be ratified by the states, not the people: "The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same."[3] It doesn't say *anything* about the people.

The proposal and ratification of amendments is similar: "The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress...." That is a long passage—ninety words. Ninety. Not one of them is "people."

But in this Charter, the citizens, when acting as a body, are the explicit supreme sovereign authority in the land. Therefore, it is *their* voice that must cry out for ratification. It's just that simple.

The ballot must ask, "Do you wish to adopt the National Charter of the United States as a replacement for the current Constitution?" Each Citizen shall vote either "Yes" to adopt this Charter or "No" to reject it.

[3] **Constitution of 1789,** Article VII, Clause 1.

This is oddly specific. Or it probably seems that way if you haven't ever been fooled by deceptive ballot language on a ballot measure. However, many of us *have* been fooled that way. This precludes that.

**Article VII, Section 2.C. Ratification Threshold**

> Ratification requires the approval of at least three-fifths ($^3/_5$) of the Citizens voting in the referendum.

So, what's the appropriate threshold for ratification? Three-quarters or two-thirds? Far too high. That's part of the trouble with the amendment process now; it's too difficult to make necessary changes. Simple majority (50% + one vote)? Too subject to the passions of the moment.

We have a model, though. We have a difficult threshold to hit, but it isn't nearly impossible. One we've seen function in precisely the manner we're looking for here: the Senate's Cloture Rule.

Now, if you've been paying attention, you're going to find that slightly jarring. After all, didn't this Charter abolish the filibuster (which is where the Cloture Rule comes into play)? Yes, it did. But the cloture threshold (as it stands today) is a difficult but reachable bar. Three-fifths of those voting (or sixty percent, if you prefer) to ratify the Charter is a challenging but reachable threshold.

A sharp reader may also notice that the threshold has popped up with respect to statehood[4] and amendment ratification,[5] as well. Both of those votes are essentially ratifications of foundational law. It is an intentional theme.

**Article VII, Section 2.D. Congressional or Judicial Intransigence**

> If Congress or the courts refuse to hold the referendum, the People may organize their own national vote the next year, on a date they choose, using any peaceful means available.

There is no way under the Constitution of 1789 to compel a ratification vote for this Charter. It simply can't be done. This is an extra-legal process,[6] just like the Philadelphia Convention was in 1787.[7]

So what happens if Congress says, "No?" Or what if the courts intervene to say, "There's no constitutional authority for this?" One or both is a virtual certainty.

If/when that happens, the people can organize a citizens' referendum. That is, they hold their own vote. The goal with this referendum isn't to ratify the Charter; it's to demonstrate

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[4] *See* **National Charter of the United States** (unratified), Article V, Section 5.A. Admission to Statehood.
[5] **Ibid.,** Article VI, Section 4.B. Amendment Ratification.
[6] "Extra-legal" isn't semantic wiggling to avoid saying "illegal." The Constitution of 1789 doesn't empower this, but neither does it forbid it. Therefore, this mechanism sits outside ("extra") the legal framework of the Constitution's Article V.
[7] The Philadelphia Convention, sometimes simply known as the Constitutional Convention was convened only for the purpose of proposing amendments for the Articles of Confederation. The delegates had zero authority to frame a new constitution. Indeed, there was no legal framework in place for doing so. The Constitution of 1789 is legitimate because it was adopted, no more, no less. This ratification process depends on exactly the same legitimacy. It's important to note that declaring this process illegitimate simultaneously and logically impugns the legitimacy of the Constitution of 1789.

broad-based public support. Put another way, the people are withdrawing their consent from the Constitution of 1789 and placing it in the Charter instead.

> If the People approve this Charter by at least three-fifths ($^3/_5$), that approval serves as a formal notice of demand to Congress and the States to conduct a lawful referendum on the next national election day.

If the citizens' referendum "passes," that's a clear demand that a lawful referendum be held on the next election day.

But how can the people demand anything?

"*MEN, being, as has been said, by nature, all free, equal, and independent, no one can be put out of this estate, and subjected to the political power of another, without his own consent. The only way whereby any one divests himself of his natural liberty, and puts on the bonds of civil society, is by agreeing with other men to join and unite into a community for their comfortable, safe, and peaceable living one amongst another, in a secure enjoyment of their properties, and a greater security against any, that are not of it.... When any number of men have so consented to make one community or government, they are thereby presently incorporated, and make one body politic, wherein the majority have a right to act and conclude the rest."*[8]

[8] **Second Treatise of Government,** John Locke. (Original publication 1690. As quoted here, Project Gutenberg eBook #7370, released April 22, 2003, most recent update December 25, 2021). Chapter VIII, Section 95.

*"Whensoever therefore the legislative shall transgress this fundamental rule of society; and either by ambition, fear, folly or corruption, endeavour to grasp themselves, or put into the hands of any other, an absolute power over the lives, liberties, and estates of the people; by this breach of trust they forfeit the power the people had put into their hands for quite contrary ends, and it devolves to the people...."*[9]

This nation was originally founded on the doctrines of Consent of the Governed and Dissolution of Government, first expressed by John Locke.

Our founders, and especially Thomas Jefferson, drew upon his thinking in the Declaration of Independence.

*"That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness."*[10]

In short, the *demand* is our *right*, as fundamentally declared at the birth of our nation.

Notice, there's no violence. No talk of revolution by force. There is simply a full-throated affirmation by the people that they demand the chance to reform their government. It's the

[9] **Ibid.,** Chapter XIX, Section 222.
[10] **Declaration of Independence,** Thomas Jefferson (1776).

exact demand that the Continental Congress sent to King George III. It's also the same assertion the delegates at Philadelphia made.

**Article VII, Section 2.E. Final Citizen-Led Ratification Vote**

> If a Citizen referendum is held in accordance with Section 2.D of this Article and citizen approval triggers notice that a lawful referendum is required, but Congress or the courts again refuse to carry out or allow a lawful referendum within the calendar year, the People may conduct a final and binding national vote on the following Fourth of July. They may do so by any peaceful means available to them. The voting methods and rules must be publicly announced in advance via any available means.

OK. Let's talk this through. I hope you'll bear with me as I cross some ground we've already covered, because it is essential to get the entire scope here.

The preferred method of ratification is for the United States government to hold a national referendum. Any legally eligible voter can vote, and the question of whether to ratify the Charter is clearly stated on the ballot with a simple "yes" or "no" vote recorded. If three-fifths of the voters agree to ratify, it's ratified, and the matter is concluded.

Realistically, that's unlikely.

The more likely scenario is that Congress will refuse to place the issue on the ballot, or that it will do so, and the referendum will be challenged in court and ruled unlawful.

In that case, the People can organize a citizens' referendum. And if that passes, they can demand a binding referendum. That gets us to this subsection.

If we have a referendum, fine. The matter's closed.

But, again, it's likely that we won't have one.

In that case, on July 4th of the following year, another citizens' referendum is held. The rules are announced in advance. The citizens hold that referendum the best way they can manage without government support.

But this remains an act of peaceful withdrawal of consent.

> If three-fifths (3/5) of those voting that day approve the Charter, the People will have spoken. This Charter will, at that point, be considered ratified and legitimate, while the previous Constitution shall be considered no longer binding.

Here's the final pressure point. If the people vote to ratify by a three-fifths majority, that's it. The Charter is the law of the land. The Constitution of 1789 is no longer in force.

Please take a minute to imagine what I'm saying here, because this is extremely important. A large majority of American voters will, by whatever means are available, vote to peacefully withdraw their consent from the old government and give it to the government described by the Charter.

No reliance on the government to carry out the vote. No pretense that the vote needs to be certified by Congress (though if we're wise, we'll ask the United Nations or another body of similar stature to observe and report).

The people will have asked for a vote. They will have been denied that vote. They will have held their own, non-binding vote and shown popular support. Having done so, they will have *demanded* a vote. They will have been denied that vote again. They will then have voted once more and will have spoken clearly.

All of this will have been done without violence.

At that point, the existing government can capitulate to the will of the people, or it can blatantly and openly declare its contempt for that will. It will have no other options available.

If it chooses the latter, it does so without any shroud or color of legitimacy. Any action it attempts to take relying on sovereign authority at that point is illegitimate according to every value America has held dear since 1776.

## Article VII, Section 3 – Transition Following Ratification

### Article VII, Section 3.A. Transition Timelines

The following provisions govern the transition from the previous form of government to one under this Charter. This Section (Article VII, Section 3) must be read in harmony with all other Charter provisions.

The timelines in this section are effective only during the transitional period. Once they have reached their conclusions, the ordinary timelines established in Articles I through VI must prevail. No transitional timeline established in this section may be revived or reapplied for any reason once concluded.

How do we go from the government established under the Constitution of 1789 to the one put into place by this Charter? That's a good question. The founding generation shifted from a very minimal government to a more robust one, so the transition was easier for them.

Today, we have over two centuries of institutional growth, legislation, tradition, and legal precedent to navigate. Simply saying, "Whelp, tomorrow everything works the new way," isn't realistic. Since that's the case, there's a need for an orderly transition plan. Without one, there *will* be the chaos that critics of replacement fear.

What does that look like?

Some elements (such as the rights presumption, enumerated rights, etc.) are self-executing. That means that the Charter already establishes the necessary law and framework. If (when) an institution steps out of line, there is already a framework to rein them back in. That doesn't relieve the people of their sovereign responsibility to hold their government accountable. They have to ensure the Charter is enforced. Still, in the transition, there's nothing that needs to be done because those provisions *can* take effect immediately upon ratification.

Other provisions (for example, the entire National Identification Number framework)[1] have the transition timelines and procedures written into the sections and clauses where they appear in the Charter.

But various provisions require specific transition schemes and timelines beyond those set out in Articles I through VI. Those mechanisms are vital to the success of this Charter. This subsection is an introduction to the means of transitioning those provisions. The important points are:

1. The transitional mechanisms have to be read "in harmony" with the rest of the Charter. In other words, if the courts have to interpret these, they must interpret the transitions as an on-ramp to, not a replacement for, the Article I through VI provisions.
2. The timelines in Article VII, Section 3 only apply during the transition to a government fully compliant with this Charter.
3. When the transition has concluded for any particular provision, then the text from the first six articles is the law of the land.

[1] *See* **National Charter of the United States** (unratified), Article I, Section 4 – National Identification Number (NIN).

4. Once a transitional timeline has concluded, it's inoperative for all time. It existed for a particular time and purpose—to transition to a new government in the period following ratification—once those have passed, there's no need for it. This passage prohibits it from rising from the dead, like a legal zombie.

**Article VII, Section 3.B. Legal Transition and Implementation**

> Upon ratification, any provision of law, precedent, or institutional rule that clearly and directly conflicts with this Charter shall be rendered inoperative, subject only to the transitional provisions outlined in this Section (Article VII, Section 3).

This is a draft for a replacement to the Constitution of 1789. It isn't a restatement of it; it's a replacement. Therefore, by definition, some things are changing. There will be case law and statutes that arose under that constitutional order that are in direct conflict with this Charter.

This subsection is a simple statement: if there is a conflict, unless there's a specific transition mechanism that says otherwise, the Charter prevails immediately.

Realistically, some of those conflicts will be obvious, but others will require litigation in the courts. That's not a flaw, and it isn't something to be afraid of. That's just what's required to move from one system of government to another.

This Charter preserves a lot of what we've known and grown accustomed to, but there are real differences. This guarantees that the changes the Charter promises are the changes it delivers.

***Article VII, Section 3.B.1. General Transition Scheme***

To ensure continuity and lawful governance, any conflicting provision of prior law shall remain temporarily in effect until the earliest of:

- Two (2) years from the date of ratification; *or*
- The date on which the administrative authority with jurisdiction over the subject matter formally declares itself fully transitioned to the framework of this Charter.

Regardless of the above scheme, specific provisions for transition contained elsewhere in this Charter supersede this general framework, and all Rights enumerated in Article I are presumed to carry their full weight immediately upon Ratification.

Do we list the transition period for each provision of the Charter individually? Nope. Even lawyers would get tired of reading and give up!

Here, the Charter is establishing the "rule of thumb" that governs transitions that aren't individually covered in the text.

There's an important thing to notice here. Everything has up to two years to shift to compliance with the Charter, unless otherwise stated. Everything, that is, except the rights of the people. They take effect immediately.

> During this period, all institutions of government shall interpret and apply existing law in a manner most consistent with the Rights, duties, and structure established by this Charter.

Even while the old systems endure, they are recalibrated. They have to respect the Charter's framework and definitions. The language is careful, though. It says "most consistent". That means that if the operative law simply can't be shoehorned into the Charter's assumptions, then that's fine. But if it can be interpreted in a way that does give fealty to the Charter, that interpretation is required.

> After this transition period, any provision inconsistent with the laws or practices in this Charter shall be fully and finally void. That negation shall only affect effects or actions in the present and future. Past lawful actions shall not be revisited.

This ties up the supremacy argument. Once the government is transitioned, it's done. What's in the past remains in effect, but anything from that day forward is governed by the Charter's framework.

And I apologize for requiring you to look up the difference between "affect" and "effect". The English language can be puckish at times.

***Article VII, Section 3.B.2. Specific Transition Provisions***

Article VII, Section 3.B.2(a). The Legislative Branch

*Article VII, Section 3.B.2($a_1$). Congressional Terms*

> Members of Congress serving at the time of ratification may complete their current terms. The rules and qualifications established in this Charter apply to all future terms and elections beginning after ratification.

This is a simple procedural paragraph that explains what happens with sitting Members of Congress upon ratification. Specifically, they aren't suddenly expelled from Congress; they finish the term to which they were elected.

This prevents a sudden legislative vacuum. We will still have a functioning Congress on the day after ratification.

*Article VII, Section 3.B.2($a_2$). Senate Reduction Plan*

> In each State, the first Senate seat to expire or otherwise become vacant shall become extinct. The other seat shall be the State's single seat going forward.

This Charter reduces representation in the Senate from two Senators per state to just one. This paragraph explains how that transition happens. It isn't capricious. The first Senate seat to become vacant...goes away. I wish I could word that more eloquently, but that's really it. The seat that isn't vacant becomes the state's permanent seat.

Why select the first vacancy as the eliminated seat? Why not a drawing of lots, or dropping the junior senator? It's simple. This mechanism doesn't force out a duly elected Senator. That's it. Nothing more high-minded or subtle than that.

This does mean that for the first decade, there will be unequal representation in the Senate. So be it. Literally any system to draw the Senate down to a single Senator per sovereignty is in some way arbitrary.

*Article VII, Section 3.B.2($a_3$). Tribal Senate Representation*

> The recognized Tribes shall elect their Senator in the next regular election during which members of Congress are elected.

This Charter gives the federally recognized Tribes sovereign representation in the Senate for the first time. This is the transition paragraph that explicitly says when the first Tribal Senator will be elected. Unless you object to sovereign representation of the recognized Tribes, there's nothing controversial here.

*Article VII, Section 3.B.2($a_4$). Accounting of Congressional Term Limits*

> Legislative terms begun prior to ratification shall not be considered toward term limits. Any term beginning after ratification shall count toward both the chamber-specific and combined term limits in Congress. No Member of Congress may be re-elected if doing so would violate the term limits established herein.

I'm not going to pretend. For the ratification effort of this Charter to succeed, we will need at least *some* Congressional support. Not everyone. Not even most in Congress. But at least a few who can help push the debate and conversation forward. The people will ratify, but the ratification effort will need a large megaphone. Why would any sitting member of Congress sign their own pink slip? Most would already have hit the term limit for their own chamber under this Charter. What would the incentive be to promote it, knowing that they would be required to leave office at the end of their current term?

So, I am writing this directly to sitting members of Congress:

We won't start counting your service until the first election *after* ratification. None of the time you've served until now counts against your term limits. You all are an inventive bunch, given either eight (House) or twelve (Senate) years to plan your future political career, I'm confident you can find a pathway forward, right?

*Article VII, Section B.2($a_5$). Ethics, Structure, & Rules Changes*

> All procedural rules, ethical obligations, and operational structures established by this Charter take effect at the beginning of the next numbered Congress, except as noted in Article VII, Section 3.B.2($a_2$).

Congress needs time to prepare for the structural changes it will face. The Senatorial reduction begins as soon as vacancies arise, but the other changes take effect at the beginning of the next numbered Congress.[2]

> Congress has one hundred eighty (180) days after ratification to update its rules, Code of Ethics, and support offices to match this Charter.

The Ethics requirements outlined in Article II, Section 2 don't take effect right away, except that Congress is required to establish its Code of Ethics, update the rules of each chamber, and reorganize its support offices within the first six months of ratification. Handling these matters immediately ensures Congress will be prepared to adopt the necessary changes at the beginning of the next numbered Congress.

*Article VII, Section 3.B.2($a_6$). Durable Redistricting*

> No amendment to this Charter or statute may be enacted that alters, suspends, overrides, or interferes with the redistricting process, requirements, or limitations in this Charter until after the first complete redistricting cycle following the next decennial census.

Once the Charter is ratified, the Congressional maps in place are locked in place until the first redistricting cycle. It will be done exclusively by randomly selected citizens, and every

[2] *For a refresher on what constitutes a numbered Congress, see* **National Charter of the United States** (unratified), Article II, Section 1.C.1. Numbered Congresses.

map will require preclearance.[3] That cycle will be the first redistricting on a national scale, independent of parties or political interference.

Until that happens, nothing can be done to amend or override the Charter's mandates regarding redistricting. Afterwards, if we don't like it, we can change it. But the first one will be clean and safe from political tampering, even via amendment.

Why?

There will be immense pressure from the existing political parties (and maybe other interests) to return to partisan and/or racial gerrymandering. This is how parties protect their majorities. Majorities are how parties exercise power. This provision breaks that partisan hold. If, after the fact, the American people decide, "Hey, maybe that wasn't such a bad system, after all," then they can go back, but only *after* trying something different on a national scale first.

*Article VII, Section 3.B.2($a_7$). Legislative Support Infrastructure*

> Congress must select the Chief Officer of Legislative Support no later than one hundred eighty (180) days after the date of ratification. The Chief Officer of Legislative Support, in turn, shall have thirty (30) days to make their initial nominations for the Directors of Administration and Enforcement.

[3] *See* **National Charter of the United States** (unratified), Article VI, Section 2 – Redistricting.

This Charter reorganizes the Legislative Branch. Part of that reorganization is more clearly aligning its support agencies under the Bureau of Legislative Support.[4] Congress doesn't get to sit on this and say, "We'll get around to it." They have 6 months to select the Chief Officer of Legislative Support, who will oversee all support agencies. In turn, that Chief Officer gets 30 days to make their first stab at nominating the Directors for the two divisions of the Bureau of Legislative Support: the Administrative Division and the Operations Division.

> Upon full confirmation of the Chief Officer and the Directors, reorganization of the various support departments of the Legislative Branch into the Bureau of Legislative Support must begin.

Once the appointed leaders are in place, reorganization *must* begin. Since no separate deadline has been set for this reorganization, the General Transition Scheme will apply.[5] That means the reorganization must be complete at the latest two years after the date of ratification.

*Article VII, Section 3.B.2($a_8$). Official Residences*

> During the first complete numbered Congress following ratification, Congress shall take care that housing is built or secured that meets the requirements under Article II, Section 1.F. Those residences must be in use by the first day of the second complete numbered Congress following ratification.

[4] *See* **National Charter of the United States** (unratified), Article II, Section 3 – Legislative Infrastructure.
[5] *See* **National Charter of the United States** (unratified), Article VII, Section 3.B.1. General Transition Scheme.

This is simple and procedural. There's really nothing here to explain.

*Article VII, Section 3.B.2($a_9$). Local Delegates*

> Local Delegates shall be elected to office for the first time in the first federal election following the first adoption of a redistricted map within a given State.

Local Delegates[6] are a new constitutional office under this Charter. This paragraph explains when they are first elected to office.

A brief explanatory note is due here, though. Why wait until the first redistricting cycle? The answer is a practical matter, not a philosophical one. For Local Delegates to exist, there must be Congressional Subdistricts for them to serve in. This Charter already has provisions for drawing the Subdistricts during the redistricting process. Creating the new Subdistricts more quickly would require a mechanism to do so, and that would happen while a host of other changes and reforms are taking effect as well.

So, to be frank, we wait because it's just simpler.

Article VII Section 3.B.2(b). The Executive Branch

*Article VII, Section 3.B.2($b_1$). Term Limits & Qualifications*

> Presidential and Vice Presidential term limits apply to all terms beginning after ratification, and any prior terms still count toward the limit. Both are presumed

[6] *See* **Ibid.,** Article II, Section 8 – Local Engagement With Congress.

> qualified until the end of their current term. The qualifications for President and Vice President listed in this Charter shall take effect in the first Presidential election following ratification.

So, there are questions about the President and the Vice President. I have the answers. Number one, no one gets kicked out of office during the current term for qualifications *or* term limits. The President and Vice President serving at the time of ratification were duly elected, and they will serve the remainder of their terms.

Where everything changes is at the next Presidential election. At that point, the qualifications spelled out in *this* Charter take effect.[7] The timing here is crucial because no one over 65 may serve, nor may anyone convicted of a felony. Article III, Section 1.A.2(c) in this Charter calls for the immediate removal of a sitting President or Vice President who is unqualified. It is at least plausible that a disqualified individual might be serving at the time of ratification, so the timing precludes their running for reelection, but doesn't force them from office in the current term.

As far as term limits, the term limits in the Constitution of 1789[8] prevail at the time of ratification through the end of the current Presidential term. After that, the new limits prevail,[9] and prior service as President or Vice President is counted toward those limits.

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[7] *See* **National Charter of the United States** (unratified), Article III, Section 1.A.2(b). Qualifications.
[8] *See* **Constitution of 1789,** Amendment XXII.
[9] *See* **National Charter of the United States** (unratified), Article III, Section 1.A.1. Terms.

*Article VII, Section 3.B.2($b_2$). Vice Presidential Duties*

> Upon ratification, the Vice President shall immediately assume the duties assigned to that Office in this Charter. Until the beginning of the next numbered Congress, the President Pro Tempore shall preside over the Senate.

In this Charter, the Vice Presidency is wholly reimagined. They are the "spare" executive, in case of a succession need. But beyond that, they are a check or aid to the President in certain matters of national security.[10] They are fully briefed and have the right and duty to object in writing to unlawful Presidential orders.[11] They still break ties in the Senate.[12] They assist Congressional leadership in suggesting a pool of candidates for nomination as Commissioner of Federal Elections.[13]

What the Vice President no longer does is preside over the Senate. This provision makes clear that, since the Vice President can't fulfill that duty, the President Pro Tempore is formally delegated that duty until the new structure and leadership take effect in the next numbered Congress.

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[10] *See* **Ibid.**, Article III, Section 2.A.1. Commander-in-Chief.
[11] *See* **Ibid.,** Article III, Article III, Section 2.B.1. Independence and Inclusion of the Vice President.
[12] *See* **National Charter of the United States** (unratified), Article III, Section 2.B.2. Senatorial Tie-Breaker.
[13] *See* **Ibid.,** Article VI, Section 1.D.3($a_2$). Appointment (of the Commissioner).

*Article VII, Section 3.B.2($b_3$). Emergency Powers*

> Emergency and cybersecurity powers, and the limitations on them, delegated to the President in this Charter shall take effect immediately. Even during the transitional period, the Presidency shall be neither plenary nor unitary.

The President's hands are not tied during the transition to this Charter. They can declare emergencies and act as necessary. The language here makes one thing crystal clear, though: the President is *not* a unitary executive and does *not* have plenary authority.

Even in transition.

There is no wiggle room, no ambiguity. We have no monarch.

*Article VII, Section 3.B.2($b_4$). The Cabinet and Appointed Executive Officers*

> Cabinet members serving at the time of ratification shall remain in Office until they resign or their terms end, in accordance with this Charter. The new rules for appointments and dismissals apply only to future appointments.

This Charter pretty radically changes the constitutional framework governing appointed executive officers.[14] This passage affirms that existing officers remain in place until they resign or are dismissed. But it also says something else, quite subtly. It says "in accordance

[14] *See* **Ibid.,** Article III, Section 2.A.3. Appointment, Removal, and Oversight of Executive Officers.

with this Charter." That means they stay in office at the end of a Presidential term unless they resign or are replaced. That preserves executive continuity.

*Article VII, Section 3.B.2($b_5$). Executive Limits*

> Article III, Section 4 shall take effect immediately and in full upon ratification.

This paragraph is a seismic shift. The Presidency instantly ceases to be unitary and plenary, if it ever truly was,[15] upon ratification of this Charter. There is no transition period. The President stops being a *de facto* constitutional monarch and becomes what they should always have been: a custodian and executor of the laws of the United States.

The paragraph also separates the Vice President from Congress, but that link has been tenuous for most of our history, in any case.

Finally, and importantly, the President and Vice President are immediately legally, rather than ceremonially, obligated to their oaths of office, even though their oath is not the one specified in this Charter.

*Article VII, Section 3.B.2($b_6$). Executive Succession*

> The Presidential succession in Article III, Section 1.B shall take effect at the beginning of the next numbered Congress. Until that time, the succession plan in place at the time of ratification shall prevail.

[15] I obviously never accepted the arguments for unitary or plenary executive power. But even for those who did, this ends that understanding.

There is nothing sexy or magical about this paragraph. It is a procedural passage intended solely to clarify succession during the transition. The reason the new succession can't take immediate effect is that it relies on a leadership structure in the Senate that will not exist until the next numbered Congress.[16]

Article VII, Section 3.B.2(c). The Judicial Branch

Next, we turn to transitioning the Judicial Branch to the new Charter.

*Article VII, Section 3.B.2($c_1$). General Rule*

> Judicial term limits, court structure, and appointment procedures established by this Charter apply to all future appointments following ratification, unless otherwise specified in Article VII.

This is a simple paragraph. Its sole purpose is to distinguish between all the stuff that follows (the existing framework that needs transition) and the future. It clearly states that, from ratification forward, all judicial appointments must comply with the Charter, except where a specific transition provision applies.

[16] **National Charter of the United States** (unratified), Article III, Section 1.B. Vacancies and Succession: "If the President dies, resigns, is removed from office, or is unable to discharge the powers and duties of the Presidency, those powers and responsibilities pass to the Vice President. Should the same circumstances extend to the Vice President, then to the Leader of the Senate...." The Leader of the Senate does not exist as an office until the next numbered Congress.

*Article VII, Section 3.B.2($c_2$). Judicial Continuity*

The Constitution of 1789 relied on lifetime appointments.[17] This Charter does not. It imposes term limits. How do we transition between the two systems? Wait for the old judges to die or retire? Hardly. But at the same time, we need to keep the courts running and stable.

> Judges and Justices serving at the time of ratification shall continue in office temporarily under the transition rules described below.

Not one judge is kicked out of office upon ratification of this Charter. Instead, the Charter establishes a transition plan.

> Within twenty (20) days of ratification, the Chief Justice of the Supreme Court will assign all seated judges, including those who were formerly Administrative judges, into the following staggered groups:
>
> 1. Group 1: Vacant Judgeships at the time of transition.
> 2. Group 2: Sitting Judges sworn into their current term within eighteen (18) months of the date of ratification.
> 3. Group 3: Sitting Judges sworn into their current term between eighteen (18) months and seven (7) years before ratification.

[17] *See* **Constitution of 1789,** Article III, Section 1, "The Judges...shall hold their Offices during good Behavior...."

4. Group 4: Sitting Judges sworn into their current term between seven (7) years and fifteen (15) years before ratification.
5. Group 5: All sitting judges sworn into their current term more than fifteen (15) years before ratification.

The Chief Justice of the Supreme Court must review every existing vacancy for tax judges, immigration judges, and federal judges. They have to assign those judges or vacancies to groups. The groups are based on tenure. This is an administrative step. It will matter when deciding who leaves office and when.

Why does the Chief Justice get 20 days to carry this out? That's a weird number. Why not 10 or 30? It's a very urgent task, because it has to be completed before the next step of the transition can be unpacked. So 10 days makes sense. But the Charter says 20. I still haven't answered the 'why' of it.

Actually, I have, in part. But the full answer requires us to jump ahead just a bit. Article VII, Section 3.B.2($c_7$) tells us that a Judge has ten days from the date of ratification to decide whether or not they want to resign or stay in office. I'll explain why when we get there, but the key point here is that 20 days factors in that 10-day decision period, plus 10 more days to complete the task.

From a practical level, the Chief Justice needs to know who will stay and who will go before assigning the groups. The number of judgeships to group within ten days will be daunting,

even with assistance from the Administrative Office of the United States Courts (which I assume they will rely on). That's the practical answer.

*Article VII, Section 3.B.2($c_3$) Vacancies at Ratification*

> Group I judgeships, as defined in Article VII, Section 3.B.2($c_2$), must be filled according to the process in this Charter within sixty (60) days of ratification.

This begins the transition. The first thing that has to happen is filling the existing vacancies promptly. This establishes a mandate to do exactly that.

> Failure to nominate or confirm appointees for all vacancies existing on the date of ratification by the deadline shall impose specific conditions on the President and the Senate. In such an instance of failure, except for the conduct of military operations, operations pursuant to a declared state of emergency under the terms of this Charter, or the need to declare war, neither the President nor the Senate, nor any Persons or bodies deputized by them, may carry out any business beyond the filling of these vacancies.

I can feel some readers' eyebrows raising through space and time. This is a strong consequence. Why do we stop the functioning of so much of our government if these vacancies are unfilled? After all, court vacancies have plagued us for years.

We are talking about a time when the nation's foundational law will shift from one framework to another. Do you suppose there will be more or fewer legal challenges to, well,

everything really? We can't afford the luxury of judicial vacancies. We don't have time to correct the problem at our leisure.

Besides, the "Well, we've had unfilled vacancies before" excuse doesn't hold water. The old order was failing. That's why this Charter is necessary.

> Judicial appointments made between the date of ratification and the first anniversary of that date are free from the requirement to draw upon the pool of candidates supplied by the Judicial Nomination Board, as those pools are not required to be available during the first year under this Charter.

This Charter imposes a mandate that the President only nominate candidates for judgeships from a preselected pool.[18] But there's a problem. The body responsible for providing those candidate pools does not yet exist. It isn't required to have lists ready until the first anniversary of ratification.[19] This passage prevents that from being a problem by allowing the President to appoint any qualified candidate during the first year.

*Article VII, Section 3.B.2($c_4$). Transition to Charter Term Structure*

Now we start actually transitioning some judges.

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[18] *See* **National Charter of the United States** (unratified), Article IV, Section 3.C.1. Nomination: "The President must nominate each Justice...and each Judge of the...Courts....Any nominee must come from the list of candidates provided for that level of court by the Judicial Nomination Board."

[19] *See* **Ibid.,** Article VII, Section 3.B.2($c_5$). Judicial Nomination Board.

> Supreme Court Justices will be replaced one at a time each year at the beginning of the Judicial Year, starting with the longest-serving and continuing in descending order of length of service, until the Court matches the Charter's structure. After that, a new Justice will be appointed every two years, in years without Congressional elections. The Chief Justice at the time of ratification will remain in that role until their term expires, at which time the seniority rule established in Article IV, Section 3.A.2 shall prevail.

Supreme Court Justices are term-limited to 18 years on the high court. As I write this, three Justices have more tenure on the court than that, and two more have tenure greater than fifteen years.

Regardless of when ratification happens, it is likely that a similar state of affairs will be in play.

It would be, to put it mildly, unwise to immediately snap the court into compliance with the Charter's term limits. If we did so and ratified today, we would establish a government under an entirely new rule of law with the high court at only two-thirds of its full strength.

That would be dumb.

No, there needs to be an orderly phase-in of the Supreme Court's term limits.

Here, the Charter's transition plan does exactly that. It replaces one Justice every year until the court complies with the term limit set in Article IV. It also keeps the Chief Justice in place until their term ends, after which the new mechanism kicks in.

I'm going to do something I generally avoid, which is to use existing Officials in the commentary. I'm going to pretend that we just ratified the Charter yesterday (I'm writing this commentary section on November 30, 2025). Here is how the transition scheme would work with our actual sitting Justices.

1. On September 30, 2026, Clarence Thomas would leave the court after 36 years of service.
2. On September 30, 2027, John Roberts would leave the court after 22 years of service, and Samuel Alito would become the Chief Justice.
3. On September 30, 2028, Samuel Alito would leave the court after 22 years of service, and Sonia Sotomayor would become Chief Justice.
4. On September 30, 2029, Sotomayor would leave after 20 years of service, making Kagan the Chief Justice.
5. On September 30, 2030, Kagan would leave after 20 years of service, making Gorsuch the Chief Justice. The Court would have only Justices under 18 years of service at this point, and he would serve through September 30, 2035, after 18 years of service.

All other Federal Judges shall follow this term schedule for their current terms, after which, the standard term limits in Article IV shall apply:

- Groups 1 and 2 shall serve until September 30 following the sixth ($6^{th}$) anniversary of the ratification of this Charter.
- Group 3 shall serve until September 30 following the fourth ($4^{th}$) anniversary of the ratification of this Charter.

- Group 4 shall serve until September 30 following the second (2nd) anniversary of the ratification of this Charter.
- Group 5 shall remain in office only until September 30 of the year following ratification of this Charter.

The other federal judges serve and limit out based on the group the Chief Justice assigned them to under Article VII, Section 3.B.2($c_2$). This provision is a simple math problem; there's nothing to explain. The reasoning behind term limits was discussed in the commentary for Article IV. This paragraph only serves to transition to them.

> No judge serving under the prior Constitution may be reappointed to the same court.

This is already stated in Article IV as the general rule. Its inclusion here is merely to foreclose any argument that existing judges constitute some special category.

*Article VII, Section 3.B.2($c_5$). Judicial Nomination Board*

> The Judicial Nomination Board must be established within six months of ratification and convene immediately to create candidate lists for each court. Starting one year after ratification, all judicial vacancies must be filled in accordance with the process outlined in this Charter and the lists provided.

This is strong. It's unequivocal.

One year.

The JNB must be in place and functioning, with usable candidate pools available to the President by the end of the first year.

But wait.... Doesn't the JNB rely on the civic lottery to choose three of its seven members?[20] The civic lottery system won't be up and running in time. How do we resolve that?

> Since the Civic Lottery will not be in place at this time, for the first selection, the three civic members shall be selected as follows.
>
> 1. All fifty States shall be entered into a random lottery, and three States shall be selected.
> 2. Each State shall select one county or parish at random, which shall provide a Citizen to serve on the Judicial Nomination Board using the same means used to select jurors.

The answer is that we create a one-time homemade version of the civic lottery specifically for this purpose.

*Article VII, Section 3.B.2($c_6$). Temporary Cross-Designation*

> Temporary cross-designation of judges to fill unfilled seats shall be permitted during the transition period, in accordance with the Charter's rules.

[20] *See* **National Charter of the United States** (unratified), Article IV, Section 6.C. Judicial Nomination Board (JNB).

This is one of those boring, but necessary provisions. It declares whether cross-designation can be used to help with the backlog caused by unfilled seats. And the answer for everyone, except the Supreme Court, is yes. The Supreme Court hears every case *en banc.* Currently, it hears and rules on cases when not all nine Justices are available. Where would you cross-designate someone *from* to cover a Supreme Court vacancy?

*Article VII, Section 3.B.2($c_7$). Assumption of Charter Obligations*

> Federal Judges and Supreme Court Justices serving at the time of ratification may have ten (10) days following ratification to declare either resignation or their intent to continue serving until their terms end. By choosing to remain in office, they are understood to have accepted the duties and obligations of this Charter, as if they had taken the required Oath.

This. Is. Vitally. Important.

"What? Why?"

The foundational law of any nation interacts with the entire government in that nation. That's inescapable. But the judiciary in that nation bears a special relationship to that foundational law that no other part of the government does. It is the interpreter of that law.

So, to move from legal philosophy to practicality, judges have to be willing to uphold the Charter, or they can't do their jobs. They get a single, honorable, off-ramp. They have ten days after ratification to bail out. No questions asked, no harm, no foul.

If they choose to stay, though....

If a judge elects to stay on the bench after ratification, this provision explicitly states that the very act of staying is their affirmation of the oath of office, which declares, not only once, but twice, that they will support the Charter.[21]

*Article VII, Section 3.B.2($c_8$). Migration of Immigration & Tax Courts*

> On the first day of the Judicial Year in the second year following ratification, all immigration judges will transition from belonging to the Executive Branch to belonging to the Judicial Branch. At that time, all Immigration and Tax Courts will be considered Judicial, rather than administrative. Immigration and Tax Judges in current service are presumed to be qualified.

This procedural passage states the exact point in time when Immigration and Tax courts become Judicial rather than Executive courts. It also precludes any potential qualification discrepancies that might arise from the shift by saying that any judge already serving is qualified.

However, in the words of every television pitchman in history, "But wait, there's more...."

> Immediately upon ratification, in the period before transition to the Judicial Branch, the Due Process protections and all other Rights afforded by this

[21] *See* **National Charter of the United States** (unratified), Article IV, Section 3.H. Oaths of Office.

> Charter must apply to Immigration and Tax courts. Cases in progress at the time of ratification must similarly conform to the Charter's Rights and Due Process requirements, even if doing so results in mistrial, nullification, or administrative burden.

This entire Charter is built on the notion that the only legitimate *raison d'etre* for a government is to secure the natural rights of its people. The Administrative (or so-called "Article I") courts under the Constitution of 1789 didn't do that. We discussed that at length during our commentary on the enumerated rights in Article I.

If that's the whole reason for government, then putting that philosophy into action can't wait.

So.

Beginning on day one post-ratification, all rights, especially those surrounding due process, are fully in effect, *even* in these courts. And if that makes matters more difficult or inconvenient for the government? Who cares. The government is there for the people, not the other way around.

*Article VII, Section 3.B.2($c_9$). Alignment of Immigration & Tax Courts*

> District, Immigration, and Tax Courts shall be co-assigned to congressional Districts at the beginning of the first numbered Congress following the first redistricting. Until that time, Immigration courts shall operate in the same

> venues and jurisdictions as they did under the Executive Branch, but shall belong to the Judicial Branch.

Article IV vigorously redesigns the Judicial Branch, especially at the District level. Part of that redesign is to move the lower courts closer to the people by aligning them with congressional districts. Another is to align at least one tax bench and one immigration bench with each District.[22]

There is an implementation problem, though. This requires a shift from around one hundred District Courts to several hundred, and then a likely second increase after the census, as congressional representation is evened out by population.

These kinds of changes require time to prepare and planning to implement smoothly.

While the official numbers won't be known until after the decennial census, population estimates will be available, which will help determine the total number of districts that will emerge from redistricting. Judges could be appointed and in place for assignment once the new district maps are drawn. Reasonable judicial budgets could be proposed and ratified.

For this reason—logistics, not philosophy—it makes sense to delay aligning the courts with the congressional districts until the first maps are drawn. In the meantime, the courts can continue to operate in the jurisdictions they currently serve.

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[22] *See* **National Charter of the United States** (unratified), Article IV, Section 2.B.1. Federal Immigration Courts *and* Article IV, Section 2.B.2. Federal District Courts.

*Article VII, Section 3.B.2($c_{10}$). Abolition of the Court of Federal Claims.*

> Beginning the day after ratification of this Charter, new claims against the government that the Court of Federal Claims would have heard must be filed and argued in Federal District Court.

This Charter abolishes Sovereign Immunity.[23] That means the People can sue the government without first getting permission. That fundamental change eliminates the need for the Court of Federal Claims. So, beginning on the very first day, any new case that would have gone to the Court of Federal Claims now belongs in the jurisdiction of the Federal District Courts.

> Claimants with ongoing cases before the Court of Federal Claims must be presumed to continue their cases in that venue, which shall finish out the cases before it. However, at their sole discretion, claimants before the Court of Federal Claims at the time of ratification may elect to move their case to District Court. Doing so is irrevocable.

But what about ongoing cases? Every single case and claim is unique, and the specific facts and circumstances surrounding it are, therefore, also unique. A blanket rule here would be inherently unfair. So the claimant (or plaintiff, if you prefer) may choose to keep their case in the Court of Federal Claims or move it to the appropriate Federal District Court.

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[23] *See* **National Charter of the United States** (unratified), Article V, Section 7 – Prohibition of Sovereign Immunity.

The choice is theirs and theirs alone. But if they choose to move their case and later regret that decision, they have to live with that regret. The government isn't obligated to entertain endless venue switching.

> Once all outstanding cases have been resolved or migrated to District Courts, the Court of Federal Claims shall be extinct.

Once the last case is heard or moved, the Court of Federal Claims will cease to exist. It's simply no longer necessary under this Charter.

*Article VII, Section 3.B.2($c_{11}$). Federal Licensing Authority*

> The Federal Licensing Authority must be convened no later than one hundred eighty (180) days following ratification of the Charter.

Hard deadline. The FLA has to be in place and functioning within six months.

> The four non-judicial members of the governing board shall, for the inception of the board only, be nominated by the American Bar Association. Each member shall draw a lot. The lots shall be numbered 1 through 4. The board member will serve until the end of the Judicial Year, plus a number of years equal to the number on their drawn lot.

The Chief Justice is relieved of the requirement to appoint the first four non-judicial members of the Authority.[24] Why? The Charter provides a provision allowing sitting Judges to recommend attorneys or professors for nomination. While it doesn't require the Chief Justice to nominate from that list, it implies that they should, at a minimum, consider it. Since there might not be time within six months to formulate that list, the first nominations should come from the American Bar Association, since its membership is from which these individuals are drawn.

Notice that the requirement for confirmation by a quorum of the Supreme Court isn't waived, only the Chief Justice's nominating duty.

It also immediately staggers the terms of the selected non-judicial members.

> All replacements of governing board members shall follow the processes mandated in Article IV, Section 6.B.

And this passage locks down the temporary nature of that waiver. Any subsequent appointment has to follow the whole process.

*Article VII, Section 3.B.2($c_{12}$). Inception of Provincial Appellate Courts*

> The Chief Justice of the Supreme Court must establish budgeting and infrastructure for the Provincial Courts by the end of August in the first full

[24] *To understand the nomination mechanism, see* **National Charter of the United States** (unratified), Article IV, Section 6.B. Federal Licensing Authority (FLA).

> Judicial Year this Charter is in effect. The President must appoint judges for the Provincial Courts by that date, who will assume office on the first day of the second Judicial Year following ratification.
>
> The President need not rely on a list of preselected candidates for initial Provincial Court appointments. Subsequent appointments will require the use of the candidate pool provided by the Judicial Nomination Board.

This may be the most milquetoast establishment of an entire appellate court level in the history of the world. I honestly don't have much to say.

This passage explains how the Provincial Courts, including both the Territorial Provincial Court and the Provincial Appellate Courts, get up and running. In year one, the Chief Justice writes a budget and gets Congress to pass it. At the same time, the President and the Senate are responsible for the appointment of Judges, so that they are confirmed and in place on the first day of the second Judicial Year.

That's really it.

The President is exempt from relying on candidate pools from the JNB, as in Article VII, Section 3.B.2($c_3$), for the same reason. Technically, that sentence didn't need to be included, but it's there to prevent bad-faith interpretations that would stall appointments.

*Article VII, Section 3.B.2($c_{13}$). Institution of the Judicial Enforcement Service*

There is no way for the Judiciary to hold the Executive in contempt without the Executive's compliance. This Charter addresses that by creating the Judicial Enforcement Service. That's good.

But the transition to the Charter is likely a place where conflicts will arise. The independence of the courts might well be tested. Hopefully not, but it's plausible.

A functioning bridge to the JES must be in place from day one.

> Immediately following ratification, the United States Marshals shall detach five Deputy Marshals for each federal judicial district to serve as a Provisional Judicial Enforcement Service. The Executive Branch shall pay these Marshals, but they shall be under the exclusive operational control of the District Court to which they are assigned.

A lot is happening here. Let's break it down.

"Immediately following ratification." Where I come from, that means the next day. "Immediate" means there hasn't been any time for anything to happen between trigger and effect.

"The United States Marshals shall detach five Deputy Marshals...." So far, this doesn't look like anything has changed. The Marshals are still the "keepers of the courts," as it were.

But look at the following line. “The Executive Branch shall pay...but they shall be under the exclusive operational control of the District Court....” Translation? The Executive pays for them, but it doesn’t command them. The courts do. Here’s the first break with the old order.

> The Chief Justice of the Supreme Court must request a budget for the permanent Judicial Enforcement Service along with the next submitted Judicial Budget.

This makes sense. You have to allocate funding for the JES, and the budget cycle is the right time to do that.

> The section of the Judicial Budget covering the first-year budget for the Judicial Enforcement Service cannot be rejected by Congress.

The budget for the first year of the Judicial Enforcement Service isn’t a request; it is a statement. Why? Because Congress has the right to reject the judicial budget, but if they do, the previous year’s budget prevails.[25] Since the JES didn’t exist the prior year, that would leave it unfunded. This eliminates that danger.

[25] *See* **National Charter of the United States** (unratified), Article II, Section 4.C.4. Judicial Budget Safeguard: “If no budget is approved by September 30 of any year, the most recent approved budget stays in effect.”

> However, for the first budget, and only for the first budget under this Charter, the Judicial Enforcement Service budget may be severed from the rest of the Judiciary.

The way Judicial Funding is structured in this Charter, the Judicial Budget is a binary: Congress can approve it or it can reject it.[26] So, for the first year, Congress retains the ability to reject the budget as a whole, but not the funding for the JES. After the first year, it is back to all-or-nothing.

> The Chief Justice must also submit their nomination for the Director of the Judicial Enforcement Service no later than June 30 of the year following ratification. Upon taking office, the Director assumes exclusive operational control of the detached Marshals.

This sets a hard deadline for nominating an individual to serve as Director of Judicial Enforcement. More importantly, upon their confirmation, it automatically transfers command of the detached Marshals to the Director.

> The President must also make their nomination for the Inspector General by the same date.

[26] *See* **National Charter of the United States** (unratified), Article II, Section 4.C.4. Judicial Budget Safeguard *in its entirety.*

This is procedural, but important. Standing up an organization like the JES without simultaneously erecting its accountability mechanism is a recipe for abuse and overreach. This passage ensures that doesn't happen.

> Beginning on the first day of October in the year following ratification of this Charter, the Judicial Enforcement Service shall be considered to exist. The Director shall hire, or cause to be hired, the employees necessary to staff the Judicial Enforcement Service.

This establishes the effective starting date of the permanent version of the Judicial Enforcement Service. It also compels the Director to hire staff.

> At such time as the Director deems appropriate, but no later than one full year after the JES is considered active, the Director shall release the Marshals that are temporarily detached to the Judicial Branch. These Marshals need not be released at the same time, but none may be retained beyond September 30 of the Judicial Year following ratification.

And finally, this establishes the mechanism for returning those poor, drafted Marshals to the Executive Branch. The exact timing gives the Director discretion, and they can be released individually, en masse, or at any point in between. But there is a hard deadline: they must be released by the last day of the Judicial Year following ratification. This prevents permanent capture, *and* it lights a fire under the Director to staff up quickly.

Article VII, Section 3.B.2(d). General Compensation

> The salaries mandated by this Charter shall take permanent effect upon the first assumption or resumption of Office following Ratification. Until the next decennial census, the PINC-01 Personal Data tables for the most recent decennial census year shall be used to calculate income percentiles.

This Charter mandates pay for several Officials. This subclause explains when those salaries kick in. They don't become active on day one following ratification. Instead, they take effect at the beginning of any term of office. It's that simple. Elected for the first time post-ratification? Your pay starts when you take office. Were you already serving at the time of ratification, but you got reelected? Your pay stays unchanged until your second term begins.

Where this Charter mandates pay, it does so as a percentile of personal income during the last decennial census. That's clean, and it scales over time without any action from Congress. But there's a problem. The Census Bureau collects personal income data through supplementary reports, not the decennial census. So, until the next decennial census (when the Bureau *will* collect that information), the Charter specifies exactly which dataset to use instead. It's still census data, but it isn't part of the once-in-a-decade enumeration.

Article VII, Section 3.B.2(e). Budgetary and Debt-Reduction Transition Plan

> Debt and spending will transition to the Charter's requirements in accordance with the following scheme.

This Charter doesn't play games with spending and debt.[27] That's long-awaited fiscal discipline. But it can't just snap into place without risking grave harm to the economy. This subclause outlines how to transition from our current fiscal environment to the requirements of the Charter.

Without all of us losing our jobs and going bankrupt in the process.

*Article VII, Section 3.B.2($e_1$). Preparation for Phase I.*

> Within one hundred eighty (180) days of ratification of this Charter, the Congressional Budget Office will establish a baseline number that expresses the federal budget deficit at that time. This figure will be called the "Deficit Baseline." This figure must be made widely available to Congress and to the American People. This will be communicated electronically, through radio advertisements, and via social media, because the American People must know exactly the state of the national finances.

Before we can fix anything, we need to know how broken it is. All that this paragraph does is create an agreed-upon measure that everyone can measure our progress against.

That measure gets widely communicated to the American people.

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[27] *See* **National Charter of the United States** (unratified), Article II, Section 4.C.1. Balanced Budgets and Deficit Spending *and* Article II, Section 4.C.2. Debt Reduction.

*Article VII, Section 3.B.2($e_2$). Phase I Budgeting.*

> During the second through sixth fiscal years after ratification, Congress may ignore the deficit reduction requirements of Article II. Instead, each year, Congress must pass a budget that reduces the deficit by one-fifth ($^1/_5$) of the Deficit Baseline. Emergency spending is authorized in accordance with the definitions and limitations of Article II. Any year with authorized emergency spending is considered an inactive year, and the deficit-reduction deadline is extended by one year.

Basically, this forces Congress to reduce the deficit by roughly 20% each year[28] over a five-year period.

"But what about emergency spending?" Good question. That's accounted for. The emergency spending provisions in Article II apply, and whenever they're triggered, they simply extend the clock.

*Article VII, Section 3.B.2($e_3$). Preparation for Phase II*

> In the sixth active year, no later than June 30, the CBO will also establish a separate baseline number that expresses the federal debt to gross domestic

[28] One-fifth is exactly twenty percent, so why qualify it with "roughly"? Because Congress can't know what the revenues will be in any given year. They budget according to CBO *estimates* of incoming revenue. They will certainly miss the mark by at least a small amount each year, due to the reliance on an estimate. That's inescapable.

product (GDP) at that time. That figure will be called the "Debt Reduction Baseline." A third figure, called the "Reduction Target," will be calculated by subtracting sixty (60) percent from the Debt Reduction Baseline, and dividing the difference by twenty-five (25). These figures must be made widely available to Congress and to the American People. As with the Deficit Baseline, they will be communicated electronically, through radio advertisements, and via social media.

This is exactly the same process used to prepare for Phase I, except that it now applies to debt. I won't insult your intelligence by explaining it again.

*Article VII, Section 3.B.2($e_4$). Phase II Budgeting.*

> Beginning in the seventh active year after ratification, Congress will begin following the budgeting scheme outlined in Article II, Section 4.C.1.
>
> From the seventh to the thirty-first active year after ratification, Congress must budget so that the percentage of debt to GDP is reduced by the Debt Reduction Target.
>
> Each year that Congress must enact emergency spending under Article II, the deadline for completing this debt reduction is extended by one year. The total number of years of debt reduction under Phase II will be twenty-five (25) years of active reduction, not counting any interruptions due to emergency spending.

I'm going to address this slightly out of order.

The blackletter here uses the word "active" three times. That's not because I like typing that word. Here, "active" means a year in which no emergency permits the incurring of debt or deficit spending.

Congress may take emergency action, but each year it does so delays the debt-reduction timeline by a year.

*This is designed to reduce the debt to a sustainable level without imposing such rigidity that Congress can't act in emergencies.*

It was vital for me to say that first.

Now, on to the rest of it. Once the deficit is tamed (which was done in the 2nd-6th years), Congress begins enacting budgets that comply with the balanced budget provisions of Article II.

Congress also begins a gradual drawdown of the debt. That drawdown lasts for twenty-five years before the regular provisions of Article II kick in.

*Article VII, Section 3.B.2($e_5$). Finalization.*

> At the end of the twenty-fifth year of active debt reduction under this transition, Congress will transition to acting solely within the parameters of Article II, Section 4.C of this Charter.

Once the full financial transition has run its course, debt and spending are fully regulated by Article II. This is the longest transition of the Charter, and for good reason. No change in government can long survive if it causes unbearable hardship for the people. This is designed to prevent that.

Article VII, Section 3.B.2(f). Intellectual Property Rights

> Copyrights, Patents, and Trademarks held at the time of ratification shall be governed and legally adjudicated according to the laws in place at the time of their registration or effect, except that Patents and Copyrights shall only extend to the original work, as outlined in Article II, Section 4.K. Refinements already protected remain so, but no new refinements may be protected on existing works.

This passage protects existing intellectual property without kneecapping the new framework established by the Charter. It is explicit about evergreening practices. Items already protected under existing law remain protected. But works under patent or copyright at the time of ratification can't be evergreened going forward. Protection lasts until its original expiration, after which it enters the public domain.

> All Copyrights, Patents, and Trademarks registered or beginning in effect after the date of ratification are governed fully by the provisions of this Charter.

The Charter entirely governs any new works. No exceptions.

**Article VII, Section 3.C. Election Transitions**

***Article VII, Section 3.C.1. Transition to Reformed Federal Elections Commission***

Article VII, Section 3.C.1(a). Appointment of the Commissioner of Federal Elections

*Article VII, Section 3.C.1($a_1$). Identification of Candidates*

> On the day following the ratification of this Charter, the President Pro Tempore of the Senate and the Speaker of the House of Representatives must meet with the Vice President. Together, these three individuals must create a list of ten candidates for nomination to the office of Commissioner of Federal Elections.

There are two points of note in this passage.

First, the timing is urgent. These three Officials meet the day after ratification. What's the rush? We discussed the urgency of specific provisions in the transition plan for the Judiciary, emphasizing it's the Judicial Branch that will resolve the inevitable disputes that arise during implementation.

Here, the logic is similar. If the Judiciary is fundamentally the point where the *law* is disputed, tested, and settled, then the ballot box is equally fundamental for the *legitimacy* of any democratically based government. The Federal Elections Commission, in its retooled

form, will be the guardian of the ballot box.[29] There can be no delay in executing its transition to its new form.

The second point worth noting is that there is no Senate Leader at the time of ratification. But in the absence of the Vice President, the Senate is presided over by the President Pro Tempore. For that reason, in this initial round of candidate vetting, that's who will fill the missing Senate Leader's seat at the table.[30]

> None of these three Officers may perform any other work until their list is submitted to a joint Congress, which must vote on each candidate independently.
>
> The only exceptions to that limitation are emergency provisions to enact a Declaration of War in accordance with Article II, Section 4.H, or to attend a Use of Force Advisory Council convened by the President in accordance with Article III, Section 2.A.1, or to concur with a Presidential Declaration of Emergency in accordance with Article III, Section 4.D.
>
> A simple majority by the joint Congress shall be sufficient to authorize any individual as a prospective appointee.

[29] *See* **National Charter of the United States** (unratified), Article VI, Section 1.D. Federal Elections Commission (FEC).
[30] *Compare to the usual triumvirate for vetting candidates to serve in this office:* **Ibid.,** Article VI, Section 1.D.3($a_2$). Appointment**.** *Note that outside of this initial appointment window, the Vice President, Speaker of the House, and Leader of the Senate are responsible for this duty.*

As I noted, there is nothing more fundamental to the legitimacy of a democratic system than the vote, and it is the FEC that will guard the ballot box. These three can't do anything other than the most extreme emergency actions until they have a list of prospective appointees for the President.

It's also important to note that for this first iteration only, Congress as a whole confirms the list. The idea is to minimize partisan capture before the partisan control mechanisms are undermined by the restructuring of chamber rules still to come.

*Article VII, Section 3.C.1($a_2$). Appointment*

> Once the list of candidates has been voted upon and at least five individuals are on the list of available choices, the President must nominate one of the named individuals within twenty (20) days. For the appointment of the first Commissioner of Federal Elections only, no confirmation is required.

The President gets a few days to review the list of candidates, but they must nominate one of them. And this one time only, that nomination is also a full appointment; no Senate confirmation is required. Why? Because Congress as a whole effectively confirmed the candidate before their name was forwarded to the President as a candidate for appointment.

*Article VII, Section 3.C.1($a_3$). Interim Maintenance of Candidate Pool*

> If the list of available candidates should number fewer than five individuals at any time between ratification and the commencement of the next numbered Congress, this process shall repeat. Once the next numbered Congress is convened, the appointment process in Article VI, Section 1.D.3(a2) shall prevail, and this clause shall be permanently inoperative at that point.

There is a small but non-zero chance that a second (or third) appointment might be needed before the Senate Leader position exists and is filled. Just in case that happens, this provision allows the list to be maintained in the same way until the start of the next numbered Congress (when all the new rules kick in). Then it locks the door against ever using this provision again.

Article VII, Section 3.C.1(b). Appointment of the Vice Commissioners

> Immediately upon taking Office, the first Commissioner of Federal Elections shall have sixty (60) days to submit their nominees for each of the Vice Commissioners required under Article VI, Section 1.D.3(b). Except for the extended timeline granted to the Commissioner for making only these initial nominations, all other mechanisms detailed in that subclause prevail.

There it is again: the word "immediately." Urgency really is key here. But not precipitous action. The Commissioner is usually allowed only 10 days to fill a vacancy. But they will

have 50 vacancies to fill, since no one has ever held the Vice Commissioner role before. So the transition plan gives them 60 days. That's still really tight—almost one per day.

Except for that one sanity-preserving extended timeline, everything else about the appointment of the Vice Commissioners is exactly as outlined in Article VI.

Article VII, Section 3.C.1(c). Supplemental Funding

> Congress must pass a supplemental funding bill, which is not subject to veto or remand, in the first sixty days following confirmation of the Commissioner. It must, at a minimum, provide funding to pay the salaries and operational costs of the Commissioner and Vice Commissioners until the next regular budget bill, which then must provide funding for a fully staffed and operational Commission.

This makes sure there's money to run the FEC. That's literally all it does.

Article VII, Section 3.C.1(d). Assumption of Authority

> The Federal Elections Commission shall immediately begin developing and administering the Civic Lottery system upon confirmation of the Vice Commissioners. It must be operational by the third anniversary of ratification and must be fully linked to the National Identification Number system by the fifth anniversary of ratification.

The very first and most urgent duty of the retooled Federal Elections Commission is to begin implementation of the Civic Lottery, including its integration with the National

Identification Number system. This will support the Civic Duty framework that this Charter relies on.

> In all other matters, the new Federal Elections Commission shall assume the operational authority vested in it by this Charter on the first day following the first federal election after ratification, replacing the existing eponymous Commission at that time.

The partisan-captured, gridlocked FEC we have today oversees the first federal election under the new Charter, then dies the day after. Why does it have authority over the first one? The new FEC may not be entirely up to speed in time for the very first election, though it should have enough time to be ready by the second. It would be nice to make a cleaner break at the time of ratification, but that's not practical.

***Article VII, Section 3.C.2. Conduct of Elections***

> The Electoral College is immediately abolished upon ratification of this charter. The President and Vice President must be elected directly by the Citizens, beginning in the next Presidential Election.

Boom. This is huge. Regardless of timing, the Electoral College is immediately repealed. Full stop. No hedging, no "unless." The people elect the President and Vice President by direct vote.

The Vice President will be elected separately, starting with the first Presidential election after ratification.

This is also an enormous change. Running mates cease to exist, at least in theory (the fact that nominating contests are abolished until the second election makes that more theoretical than real, but it will get voters accustomed to the idea).

Otherwise, there shall be no changes to the election structure in the first Federal Election following ratification. Acceptance voting, declaration of candidacy, campaign season, and the elimination of nominating contests shall begin during the second Federal Election following ratification.

Frankly, it would be preferable to transition to these features immediately. However, most of them depend on acceptance voting being in place, and that may take a little bit more time to implement.

Automatic voter registration shall begin on or before the fifth anniversary of ratification, and local election jurisdictions shall continue to administer registration until that time.

And for this provision to work correctly, the National Identification Number system must be fully operational. That will take up to five years to fully implement,[31] so automatic registration will have to await the infrastructure to support it.

### Article VII, Section 3.D. Emergency Failovers

> If a designated Branch or Officer fails to carry out a Charter-mandated transition action by the required date, and no alternative is provided elsewhere in this Charter, the following principles apply.

We don't live in an ideal world. Most people try to do things right, even when they disagree with them, but mistakes and oversights happen, even with people of good faith. Add to that the minority of people who are obstructionists or opportunists, and you have a pattern of problems to plan for and address.

The Emergency Failovers are that plan.

#### *Article VII, Section 3.D.1. Failure to Convene an Appointing Body or Confirm a Constitutional Officer*

> If the authority named in this Charter fails to convene an Appointing Body, the Supreme Court must appoint a temporary replacement or an Appointing Body from qualified candidates. If the Senate refuses to consider a nominee for a constitutional Office required by this Charter within thirty days of nomination, the Chief Justice must

[31] Article I, Section 4.C.3. Post-Ratification Transition (of the NIN system).

> declare in writing a ten (10) day final period. At the end of ten days, if there has still been no vote on confirmation, the nominee is confirmed. This provision shall only affect initial appointments to Offices mandated by this Charter, or initial selection of Appointing Bodies, until the proper authority affirms or supersedes the Supreme Court's choice. Subsequent appointments must follow the normal processes mandated elsewhere in this Charter.

This deals with two problems. The first is when a body is required to appoint an official or set of officials, but that body isn't convened. The second is when a required constitutional Officer doesn't receive a confirmation vote in the Senate, as required.

In the first case, the Supreme Court can choose an appointing body.

In the second, the Supreme Court gives the Senate 10 days' written notice to confirm the nominee. If the Senate still fails to act, the nominated person is automatically confirmed.

Why the Supreme Court? Simply put, they are the least likely to be directly involved in the failure, they are always convened, and they are expected to resolve disputes and controversies neutrally.

This is a limited power, and the guardrails are clearly spelled out. The Supreme Court can only force confirmation on initial appointments. And its choice of an appointing body only holds until the proper authority either affirms its choice or supersedes it.

***Article VII, Section 3.D.2. Failure to Enact Implementing Statutes***

> If Congress fails to enact any implementing Statute, all members of Congress immediately become ineligible to run for federal office upon expiration of their term, unless the failure is remedied before the then-current Congress concludes.

Congressional foot-dragging is unacceptable. For the first two, perhaps three numbered Congresses, its primary mission, after funding the government, should be ensuring the smooth implementation of this Charter. If they don't do that, it doesn't matter who was stalling the train; all the passengers have to get off.

There's an escape hatch (which will be explained a little more fully in a moment). If they remedy their failure before the end of that particular numbered Congress, everything resets. The punishment exists, but the goal is compliance, not punishment.

Maybe you're thinking this is a lot: seven ordinary people writing a law. But who is the ultimate sovereign in the United States? It's the citizenry. Ordinary people. If Congress won't use the power that is delegated to it, the citizens will.

> Seven Citizens from the national capital shall be randomly selected the day after the implementation deadline to write and implement an interim statute, not subject to Presidential veto or remand.

However, if they miss a deadline, seven citizens in D.C. will be selected to write the missing statute themselves. That statute can't be vetoed. It can't be sent back to them on remand. It simply takes effect. That's not a great solution, but it is an expeditious one.

And, it need not be a permanent solution....

> Congress may repeal any such interim law, but only upon presentation of a duly enacted and signed replacement statute.

Congress can, through regular order, enact the law it was supposed to enact in the first place, then repeal the interim law.

> Such a replacement must take care to respect as much as possible the interim law's intent to avoid unnecessary implementation delays.

This sentence imposes a duty on a tardy Congress not to unnecessarily undo what the interim law accomplishes. The goal of everything in this clause is to minimize implementation delays, and Congress is required to respect that.

***Article VII, Section 3.D.3. Failure to Organize New Institutions***

> Whenever any authority designated in this Charter fails to organize a new institution mandated by this Charter by its implementation deadline, the Chief Justice must appoint an interim administrative officer to organize the new institution until full compliance is achieved or the designated authority acts. If the Chief Justice is the

> authority who failed to act, the next most senior Associate Justice shall act in their stead.

We've addressed failures in appointments and in enacting laws; now we complete the trifecta with failure to set up new institutions.

As before, we turn to the Supreme Court for relief, with an added wrinkle, just in case it was the Chief Justice who failed in their duty.

I'll say this here, but it applies to all of the emergency failovers. The blunt instruments in place here take effect only when institutional actors fail. And the imperfect nature of these failovers is less risky to the new constitutional order than the failures they're designed to overcome.

***Article VII, Section 3.D.4. Provisional in Duration and Effect***

> These failover provisions are strictly temporary and expire upon lawful institutional compliance. Their invocation shall not create binding precedent going forward.

And that's that. The failovers do what they were designed to do—ensure the transition continues forward, in spite of human failures.

After that?

They evaporate. They have no substance. No strength.

The explicit text even says, in so many words, that their invocation isn't precedential.

They solve a problem, then they die.

## GLOSSARY AND USAGES

The average Citizen of the United States must be able to understand this Charter. Certain terms must be clarified to remove doubt about their meaning. These definitions shall serve as the legal definitions in this Charter, and this Glossary and its Usages are to be considered an integral and inseparable part of the Charter.

### Charter, Constitution, and Constitutional

In this document, "Charter" refers to the text you are reading now. "Constitution" refers to the United States Constitution ratified in 1789. The term "constitutional" refers to whatever body of law is, at the relevant time, the supreme governing document of the United States—either the 1789 Constitution or this Charter, if and when it is ratified.

### Will, Shall, or Must

In this Charter, the terms "will" and "shall" carry equal weight and impose legal obligation. The term "must" carries greater urgency and immediate necessity. For example: If my car needs an oil change and has a flat tire, I "will" or "shall" get an oil change soon, but I "must" change the tire before I can drive it.

## Glossary

Acceptance Voting

A voting method where voters can vote for any number of candidates they find acceptable, including none or all. Each candidate voted for receives one vote from that ballot. The candidate who receives the most total votes wins.

Administrative Law

Rules, procedures, and decisions created by government agencies under authority granted by Congress or the Charter. It does not carry the same legal weight as constitutional law or statutes enacted by Congress.

Animus

Hostility, bias, or discriminatory intent toward a particular person or group, whether expressed openly or embedded in laws, policies, or institutional practices.

Armistice

A military agreement for the cessation of hostilities between nations, non-state actors, or a combination. It is not as binding as a treaty.

Bill of Attainder

A law that declares a specific person or group guilty of a crime and imposes punishment without a trial.

Campaign

The collection of efforts, not including the individual votes of citizens, designed to influence the outcome of an election. It includes messaging, advertising, organizing, spending, and the deployment of resources.

Campaign Donations

Financial consideration, materials, property, or infrastructure provided for the purpose of conducting a Campaign.

Campaign Organization

1. An association led by a Candidate or their appointed Campaign Manager for the purpose of conducting and coordinating a campaign for public office.
2. The Association responsible for submitting a petition for amendment or the body specified for submitting a referendum.

Candidate

A citizen running in an election for an office of trust.

Cease-Fire

An immediate and temporary halt to active hostilities, typically ordered to allow humanitarian relief, prevent escalation, or create space for negotiation.

Censure

A formal statement of disapproval issued by an official body, without removing the person from office.

Civic Duty

Any of the mandatory forms of service that Citizens must perform to keep the Republic functioning.

Civic Lottery

A random-selection process used to assign Citizens to perform specific Civic Duties.

Civic Rights

The exclusive Rights of Citizens, which derive from the citizens' unique relationship to the government.

Civil Rights

Legal protections established by the Charter to safeguard the Natural Rights of all Persons and ensure equal treatment under the law.

Community of Interest

A population sharing significant social, cultural, economic, or historical characteristics, whose integrity should be preserved when drawing electoral districts.

Consent of the Governed

The principle that the government derives its legitimacy and authority from the voluntary agreement of the People, expressed through mechanisms such as elections, referendums, and reaffirmation of the Charter.

Declaratory Relief

A court judgment that defines the legal rights or status of parties without ordering any specific action or awarding damages.

Derogable

A characteristic of a right that means it can be denied, compromised, or removed.

Due Process

The legal requirement that the government must respect all rights owed to a Person under the law, including fair procedures, notice, and an opportunity to be heard before any deprivation of life, liberty, or property.

En Banc

Describes a session in which all the judges on a particular court hear a case together, rather than a smaller panel or individual judge. For example, the Supreme Court

usually hears oral arguments *en banc*, while lower courts may only do so for especially important or complex matters.

Excusal

The act or instance of excusing. In this Charter, it refers to a formal recognition that a Citizen is excused from Civic Duty.

Executive Authority

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|---|
| The power to direct an agency, officer, or employee of the United States; to obligate federal funds as authorized by Congress; to implement or enforce law within the federal government; to supervise federal operations; or to exercise powers delegated by statute. |

Executive Order(s)

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|---|
| Executive orders are directives issued by the President to carry out or administer the laws of the United States. They are valid only when grounded in statutory or constitutional authority. Executive Orders are legally binding but of relatively low weight compared to other laws. |

Funding Period

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| The Funding Period is the defined period of time during which Campaign Donations may be solicited and received. |

Habeas Corpus

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|---|
| The right of a Person to challenge their detention before a court and demand justification for their imprisonment. Under this Charter, *habeas corpus* is absolute and inviolate. |

Imminent Harm

A harm is considered imminent if it meets two conditions: 1) the behavior that causes the harm is reasonably foreseeable and likely, and 2) it's expected to happen in the immediate or near future.

Implied Powers

Powers not expressly stated in this Charter but reasonably necessary to carry out those that are. These powers may not be used to suppress or discourage the exercise of any enumerated Right.

In Rem Jurisdiction

Legal authority exercised over property itself rather than a person; this Charter prohibits in rem jurisdiction, requiring all legal actions to be directed at persons, not objects.

Injunction/Injunctive Relief

An injunction is a court order that requires a person or entity to do or refrain from doing a specific act to prevent harm or enforce legal rights. Injunctive relief is the legal remedy in which a court issues an injunction to prevent harm, enforce rights, or maintain the status quo.

Natural Rights

Fundamental rights that belong to all human beings by virtue of their humanity. They exist independently of any government and are the foundation of all legitimate law.

Persons

All human beings recognized under this Charter as holders of Natural and Civil Rights, regardless of age, nationality, or citizenship status.

Plenary

With respect to the powers of an official or body, plenary means they are unqualified, absolute, or entirely self-contained.

Presidential Officers

Officers who exercise Executive Authority delegated to them by the President and are not supervised by any Officer other than the President.

Probable Cause

A reasonable and factual basis to believe that a crime has been, is being, or will be committed, required for the issuance of a judicial warrant or other government action affecting Rights.

Prospective Harm

Harm that could be caused by conduct that is: 1) authorized, planned, or reasonably foreseeable under existing law, policy, or practice, and 2) the claimant or class faces a realistic possibility of being subjected to the harm, which could occur under the ordinary operation of the law or policy in question.

Public Advocacy

Speech or activity intended to influence public opinion, policy, or elections. Under this Charter, public advocacy during election periods is subject to rules that protect fairness, including restrictions on negative campaigning within specified timeframes.

Ratify, Ratification

For this Charter, these words refer to the formal adoption of law by an authorizing body like the Senate (for treaties) or the People for the Charter, itself.

Real Harm

A real harm is one that has occurred or is ongoing.

Recognition (of Foreign Governments or Organizations)

The formal acknowledgement by the President of another government or organization as having legitimate, legal authority. Under this Charter, a meeting between the President and representatives of a government or non-state organization does not confer recognition, and the President is required to state whether recognition is being extended explicitly.

Recusal

The required act of a judge or official withdrawing from a case or matter due to a conflict of interest or the appearance of bias.

Referendum

A direct vote by Citizens to decide a specific issue, policy, or constitutional question. Under this Charter, referendums are binding.

Remand

1) The act of the President returning a bill to Congress with written recommendations for revision, rather than issuing a veto.
2) A court's order sending a case back to a lower court or agency for further action or correction per the higher court's ruling.

Republic

A system in which the People hold Sovereign power and govern through accountable institutions under a fixed Charter of Rights. The American Republic is a form of

democracy—structured to limit power, protect Rights, and ensure that all authority derives from the consent of the governed. Claims that the American Republic is not a democracy are incorrect; it is an indirect constitutional democracy in which the People are the ultimate source of lawful authority.

Sovereign/Sovereignty

The ultimate authority to govern, which under this Charter resides with the People. Citizens are the Sovereign source of all governmental power, and no institution may claim legitimacy except through their consent.

Speculative Harm

Speculative harm is harm that hasn't occurred and is only hypothetical in nature. Any harm that doesn't meet the definitions of real, imminent, or prospective harm is speculative.

Standing

The right to bring a legal claim in court. Under this Charter, any Person has standing if they have suffered harm, face a credible threat of harm, or if their Rights are being limited. Citizens may also bring claims in the public interest when the court has the power to grant relief.

Subordinate Officers

Officers who exercise Executive Authority on behalf of a Presidential Officer or Ambassador who is their direct supervisor.

Sua Sponte

A Latin term meaning "on its own motion" or "of its own accord." It refers to actions a court takes without either party asking.

Treaty

A formal and binding agreement between the United States and a foreign government or entity, negotiated by the President and requiring approval by two-thirds of the Senate.

Truce

A mutually agreed pause in hostilities between opposing parties, typically with specific terms or objectives. A truce is more structured and deliberate than a cease-fire, often reflecting a coordinated effort to de-escalate or negotiate.

Tribunal

A temporary panel of judges or other officials convened to hear and decide specific matters, such as ethical or professional complaints against a Federal Judge, as defined by this Charter.

Unitary

Possessed of the undivided or whole character of some type of unit. In this case, it is most often encountered in the context of unitary executive theory, which holds that all executive power belongs to a single individual (the President), making all other officials subordinate to that person.

Veto

The President's formal rejection of a bill passed by Congress, preventing it from becoming law unless overridden by a three-fifths vote in each chamber.

**Undefined Terms**

Any undefined term in this Charter must be interpreted in light of its ordinary public meaning, consistent with the Charter's purpose of securing liberty, equality, and lawful government by consent of the People.

## AFTERWORD

Here's what I've tried to do with this commentary:

- Make the case for replacing the Constitution of 1789,
- Show what's broken now,
- Show how the proposed National Charter would address it, and
- Explain and advocate for the Charter.

I've done my best to build a systematic foundation that we can use to debate a replacement for our outdated Constitution. This is my attempt at something like the Virginia Plan—a fully realized document to use as a starting point of debate.

If you're reading this Afterword, you've walked with me through a lot of Charter text and even more commentary on that text. I want to thank you for that, regardless of whether you think me a hack or a genius.

The next step is up to all of us. Do we sit and watch as the last of our Republic fades, or do we step up and seize the right Jefferson invoked "to alter or to abolish...and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness?" *(Declaration of Independence, 1776)*